

The complaint

Mr H, as sole Lasting Power of Attorney (LPA) for Mr C, complains that Nationwide Building Society refused to re-instate an overdraft on Mr C's account that Mr H had removed in error. Mr H says Mr C's account was registered at Mr H's address and despite a request to change it back, this hasn't happened, and this has affected Mr H's credit file.

What happened

Whilst dealing with Mr C's affairs Mr H accidentally removed a small overdraft on Mr C's current account. When Mr H asked to have the overdraft re-instated, Nationwide provided some conflicting information but explained to Mr H that, as an LPA, he couldn't apply for an overdraft facility for Mr C. Mr H complained that he hadn't been told this was the case and asked that Nationwide show him where this is stated in its policies. Mr H said he felt this discriminated against Mr C. Nationwide thought that it followed its processes and explained an LPA can't apply for new credit on an account.

Mr H also complained that Nationwide had changed Mr C's address to an incorrect address. Nationwide accepted this happened and explained this had been quickly corrected and it hadn't sent out any correspondence to an incorrect address.

Mr H brought the complaint to the Financial Ombudsman Service and one of our Investigators looked into things. The Investigator thought that as Nationwide had now accepted the overdraft could be re-instated but still hadn't actually re-instated it, that this part of the complaint should be upheld. The Investigator thought that Mr H would've been made aware at the time he registered to become the LPA on Mr C's account that he would be unable to apply for credit on the account – this includes arranging an overdraft. The Investigator thought that Nationwide's error in changing Mr C's address to one that was incorrect could've been avoided if it had notified Mr H as Mr C's POA of the change of address.

The Investigator thought that Nationwide should re-instate the overdraft and pay Mr C £75 for the inconvenience caused.

Nationwide accepted it should pay Mr C 75 for the inconvenience it caused and confirmed the overdraft facility had been re-instated the overdraft. Mr H asked that an Ombudsman decides the complaint.

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.

Mr H is authorised in law to represent Mr C, but that doesn't mean Mr H is an eligible complainant in his own right and we wouldn't award compensation for any impact caused to Mr H. The crux of the complaints Mr H has made on behalf of Mr C are Nationwide said it wouldn't re-instate the overdraft Mr H had removed in error; that Nationwide didn't tell Mr H that Mr C's account must be registered at Mr H's address and made an error in registering

an incorrect address; and that Nationwide didn't provide Mr H with the policies relating to LPA's at the time of registration. I will address each of these complaints and respond to the relevant comments Mr H has provided. For clarity I can confirm I've read all of Mr H's responses to the thoughts of the Investigator.

Overdraft and provision of policies for POA

There's no dispute that Mr H removed the overdraft on Mr C's account. In his discussions with Nationwide Mr H was told the overdraft could be re-instated, then that it couldn't as he couldn't apply for credit on behalf of Mr C. Nationwide referred Mr H to the declaration he agreed to when registering the Lasting Power of Attorney and explained the POA can never apply for or increase credit – including overdrafts – on an account. However, this wasn't really a new application for credit – or even a request to increase an existing facility – it was a request made by Mr H to correct his error.

Having reviewed the evidence it seems to me that Nationwide didn't take ownership of the problem Mr H had experienced. I don't think the conversations Mr H had with inexperienced staff helped Mr H to resolve the overdraft issue as quickly as it should have. Nationwide now accepts it could've re-instated the overdraft in the circumstances of this case and Mr H has confirmed to the Investigator that the overdraft has now been re-applied. I think this is a fair and reasonable outcome, but it doesn't address that Mr C was without the overdraft for some time and that the information Nationwide provided was not always as clear as it should have been, nor was it provided as quickly as it should have been.

Mr H says he feels Nationwide's actions in this regard are discriminatory on the grounds of Mr C's disability. I should first explain that we are an informal dispute resolution service, meaning we don't have the power to decide whether or not Nationwide is in breach of the Equality Act 2010, as only a court has the power to do this. What we can do is take relevant law and regulation into account when deciding what's fair and reasonable in the circumstances of a complaint. While I understand Mr H is frustrated with how Nationwide acted, I don't think it has acted unreasonably or unfairly. I say this because the policies Nationwide applied were made to protect Mr C, and it's more likely than not Mr H would have been made aware of these policies at the time he registered the LPA at a Nationwide branch. Nationwide says the policies were read to him on the local branch and Mr H signed to say he understood them. Regardless of this, Nationwide does explain on its website that Attorney can't apply for credit on behalf of someone else. Mr H would have reasonably been able to make an informed decision about what an Attorney was permitted to do when acting for Mr C, but I think it would have made it much clearer to Mr H if Nationwide had sent a copy of its policies in the regard when it was requested to do so.

Registered address and information

Nationwide has provided a copy of the letter it sent to Mr H after he registered the LPA. This letter explains all correspondence for Mr C would be sent to Mr H's address, and that Mr H could change that if he wished to. I've seen a sample registration of power of attorney form that Nationwide use, and this too suggests that the address can be changed by the POA at any time; it can be either Mr H's address or Mr C's address. Nationwide confirmed to Mr H in August 2022 that he'd selected correspondence on Mr C's account to be sent to him in December 2020.

The address for correspondence for Mr C's account was changed back to Mr C's home address in November 2022. Nationwide initially made a mistake when it made this change, but this was corrected several days later when it became aware. I've not seen anything to suggest Nationwide sent any communication to the incorrect address during this period. I appreciate Mr H is concerned there may have been a data breach, but he will need to

contact the Information Commissioners Office (ICO) in this regard.

I understand Mr H believes Nationwide has reported credit information for Mr C's account to credit reference agencies using Mr H's address. Nationwide says it hasn't reported anything to Mr H's credit file and I've seen nothing to suggest this is the case. Mr H says that Nationwide's response to his complaint letter of August 2022 confirmed that the registered address of the account will be that of the LPA and they refused to amend the account address to that of Mr C. But I think Nationwide made its position in this regard clear. It said, it couldn't have an address for a member {Mr C} who doesn't hold capacity to deal with their finances and therefore the address it would use would be the attorney's address {Mr H}. I think this reflects what is included in Nationwide's policies and I don't think it's an unreasonable approach. Nationwide Data Disputes Referrals Team confirmed that Mr H's address is showing as a linked address to Mr C's account and not the registered address of the account. This seems reasonable to me as it would likely support Mr H in carrying out his duties as POA. However, Nationwide has offered to remove the linked address if Mr H contacts it. Although I appreciate Mr H's concerns here, based on what Nationwide has done previously, I think this is a fair and reasonable offer if he has ongoing concerns. If he wishes this to be done, Mr H should contact Nationwide direct.

Nationwide has already re-instated the overdraft, but I think it would have been reasonable for it to have done so much earlier than it did. However, I've decided that Nationwide should also pay Mr C £75 for the errors it made in relation to the change of address, an unreasonable delay in re-stating the overdraft, and for failing to send Mr H copies of the policies he'd requested several times. I understand Mr H has been sent a link to the Nationwide policies during the investigation, but it may be prudent for Nationwide to consider sending Mr H hard copies of the policies relating to power of attorneys to avoid any further confusion in this regard.

My final decision

For the reasons I've detailed above, I've decided that Nationwide Building Society should pay the sum of £75 to Mr C's account as compensation for the errors it made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 September 2023.

Paul Lawton
Ombudsman