

The complaint

Mr E and Ms E complain Nationwide Building Society ("Nationwide") have failed to make reasonable adjustments for them and feel that it has discriminated against them due to Mr E's mental health conditions.

What happened

Mr E is vulnerable and suffers from mental health conditions. Mr E says an account was opened at Nationwide in his mother's name ("Ms E"), so that she could have access to money as a parent for his needs. For convenience Mr E was added to the account in 2014. Mr E contacted Nationwide in August 2023 and explained that he was concerned that the funds held within his and Ms E's joint account would be assessed as having funds available to her which would affect her benefits and so wanted her to be removed from the account.

But Mr E was also concerned if this happened Ms E wouldn't be able to access his funds if he fell ill or wasn't able to manage his account as normal for any other reason. As a solution Mr E wanted Nationwide to remove his mother from the account but in the event that something happened – allow his mother to have access to it.

Nationwide's adviser initially didn't think this was possible due to its duty to protect the account, but thought there was the possibility of third-party access and said they would investigate this further and get back to Mr E.

The following day the advisor called Mr E back and provided the following options outside of leaving the account as it is:

1. Give third-party access to the account which allows a trusted party – in this case Ms E – to access a customer's account in the event of incapacity for a limited period of 12 months; or
2. Arrange for Ms E to have Power of Attorney over the account which would allow her to access Mr E's account in the event of his incapacity.

Mr E didn't wish to take up either of the options as he felt 12 months was too limited a time period and a power of attorney wasn't viable due to the expense and inconvenience of setting it up.

Mr E didn't feel Nationwide were offering reasonable adjustments under the Equalities Act 2010 and raised a complaint.

Nationwide said it would need both party's agreement to move the account into Mr E's sole name but before that there weren't any reasonable adjustments it could make. Nationwide said it can review the circumstances on receipt of an application to move the account into Mr E's name.

Nationwide explained that it only allows third party access to another person's account in exceptional circumstances and this is designed for short term help. Furthermore, it only

allows the third party to do your banking in branch for up to 12 months and can only be applied for once. For longer term help it suggested power of attorney but that Mr E obtained independent legal advice before going down that route.

Mr E was dissatisfied with this and so brought his complaint to this service.

One of our investigators looked at all of this but thought that Nationwide had taken reasonable steps to ensure that Mr and Ms E's needs were acknowledged and dealt with effectively and in-line with FCA guidance. Furthermore, they thought Nationwide's advisor offered all the support they could in the circumstances – especially as they were unable to deviate from Nationwide's policies and as such didn't think Nationwide had done anything wrong or treated Mr and Ms E unfairly.

Mr E disagreed and has asked for an ombudsman's 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.

Mr E says Nationwide failed to make reasonable adjustments in the support it offered him when he wished to have Ms E moved from their joint account but still provide her with access in the event something happened to him or he was incapacitated. He believes Nationwide has discriminated against him because of his vulnerabilities under the terms of the Equality Act 2010.

I might help if I explain that while we do take relevant law and regulation into account when arriving at our decisions, our remit is focused on whether we feel a fair and reasonable outcome has occurred – from an impartial perspective - after taking all the factors and circumstances of a complaint into consideration. Only a court could make a finding as to whether a business breached its duty under the relevant act.

But that said when considering Mr E's complaint, I've had particular regard to the Equality Act 2010 and guidance for firms provided by the Financial Conduct Authority ("FCA").

Firstly, as Nationwide explained, as the account was jointly held by Mr and Ms E nothing can be done without the consent of both account holders as Nationwide have a duty of care to both Mr and Ms E. Both Mr and Ms E are deemed to have beneficial ownership of the funds held in the account and it wouldn't be fair or reasonable to have a party removed from the account without the consent of both. So I don't think Nationwide was wrong in its advice regarding not being able to implement any of the options it had available until it had both Mr and Ms E's consent, as by doing this it would be failing in its duty of care to Ms E. However, I understand that Ms E has now been removed as a joint party to the account, so this is no longer of relevance to the outcome.

So what I next need to consider is now that Ms E has been removed from the account whether the options Nationwide have provided to Mr E are fair and reasonable taking into consideration his circumstances and vulnerabilities. And if not, whether there are any further reasonable adjustments it needs to make.

Mr E is unhappy that Nationwide will only provide third-party access for 12 months. But I don't think this limit is unreasonable or by enforcing it Nationwide has failed to make a reasonable adjustment. Nationwide has a duty to protect its customers interests and allowing a third party to access and operate an account of a vulnerable customer over a long period

of time with no protection exposes both the customer and Nationwide to potential harm should the arrangement be abused.

So I don't think Nationwide's policy on this is unreasonable, especially as there is an alternative safer legal option available – granting a power of attorney - the purpose of which is to cater for these circumstances.

I appreciate that neither option gives Mr E entirely what he wants and that other banks might have different policies on the granting of third-party access to accounts. But that doesn't mean it automatically follows that Nationwide hasn't provided Mr E with reasonable options, or failed to make reasonable adjustments.

The options Nationwide have provided Mr E within the short and longer term are considered good practice by the FCA and in-line with the FCA's guidance for firms on the fair treatment of vulnerable customers. So on that basis I don't think Nationwide has treated Mr E unfairly.

Mr E is also unhappy regarding the service he received from one of Nationwide's advisor's. He says that the advisor failed to understand his vulnerabilities and is unhappy with their attitude and the tone used when talking to him.

Unfortunately, it's not been possible to listen to the phone calls between Mr E and Nationwide's advisor, so I am limited by not being able to hear how any questions were asked or advice delivered and so I must make my findings on what I do have – which is the transcript of the calls. And from reading this I think at times Mr E may have been unhappy with some of the questions asked and the answers given by the advisor, but overall, I don't think this was due to the conduct of the advisor, but rather the questions the advisor needed to ask to get a full picture of Mr E's circumstances and Mr E not being happy with the answers he was given.

Finally, I've also seen no evidence that Nationwide discriminated against Mr E directly or otherwise because of his vulnerabilities. So it follows that because I don't think Mr E's request amounted to a reasonable adjustment in the circumstances and I think the options Nationwide offered Mr E were reasonable and that Nationwide have treated Mr E fairly and so I do not uphold his complaint.

My final decision

For the reasons I've explained I've decided not to uphold Mr E and Ms E's complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E and Mr E to accept or reject my decision before 12 March 2024.

Caroline Davies
Ombudsman