

The complaint

Mr L complains Bank of Scotland plc trading as Halifax failed to add his attorneys to his account.

What happened

Mr L's complaint is represented by his attorney, who, in turn, is represented by a legal firm.

Mr L lost capacity and had an existing enduring power of attorney (EPoA) signed, but not registered or in force. The legal firm sent the EPoA off to the Office of the Public Guardian (OPG) to be registered.

The legal firm also sent Halifax the EPoA and asked it to put it in place, even though it wasn't registered. The legal firm was looking to rely on the Mental Capacity Act (2005) which says, broadly, an unregistered EPoA can be put in place in certain circumstances.

Halifax refused to put the EPoA in place until it was registered, so the legal firm complained. Halifax responded to say the EPoA had to be registered before it could be put in place.

Unhappy with this response, the complaint was brought to this service. An investigator looked into things but didn't think the complaint should be upheld. The investigator thought it was fair for Halifax to ask for the EPoA to be registered, in line with its process.

The legal firm disagreed and spoke to the OPG. The legal firm says the OPG told it Halifax could rely on its processes and procedures. The legal firm thinks Halifax must be bound by the legislation.

The legal firm said the attorneys wanted to access Mr L's account as they suspected there'd been unusual activity on Mr L's account. The complaint was passed to me to decide things.

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 think Halifax has an obligation to protect Mr L and his accounts. Halifax also has an obligation to act in line with Mr L's wishes, such as applying the power of attorney. It's not an easy balance, and I don't think it's as simple as the legal firm has said.

The EPoA the legal firm sent Halifax was dated September 2007. The legal firm wrote to Halifax in August 2023, almost sixteen years after the EPoA had been completed.

I think it's reasonable to consider a lot could have changed for the potential attorneys in this time. Looking at the correspondence between the legal firm and Halifax it seems one of the attorneys named on the EPoA had, sadly, passed away.

There are also certain restrictions on people being able to act as attorney, and I'd not expect Halifax to be deciding this, I think it's the role of the OPG.

And the OPG decides if the attorneys are the right people to represent Mr L during the registration process.

Halifax was presented with an EPoA which was over fifteen years old, with only two of the three named attorneys surviving and it was unregistered. I think it's reasonable for Halifax to wait until the EPoA was registered.

In response to the investigator's assessment the legal firm said the OPG had told it Halifax could rely on its processes and procedures. I think the same, it's reasonable for Halifax to rely on its process and ask for the EPoA to be registered.

The legal firm also said Halifax must be bound by the legislation it mentioned. This legislation says the EPoA can be used without registration, but only in certain circumstances.

I've taken account of this legislation, given it's relevant here, but I decide complaints on a fair and reasonable basis. If the legal firm or Mr L's attorneys want a decision on whether Halifax has breached this legislation, they'd need to go to court.

Having considered things on a fair and reasonable basis, I think Halifax has acted fairly in delaying giving access to the attorneys until the EPoA had been registered. I won't be asking Halifax to do anything to resolve this complaint.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 April 2024.

Chris Russ
Ombudsman