

## The complaint

The estate of Mrs H, represented by personal representative Mr C, complained about Nationwide Building Society. Nationwide had allowed payments to be made from the late Mrs H's account, to someone who didn't have letters of administration for the estate.

## What happened

Mrs H died intestate on 9 September 2021.

On 29 September 2021, a third party, Mr A, went to a Nationwide branch. He told Nationwide he wanted to withdraw £3,172 from one of Mrs A's accounts to pay for her funeral. Nationwide gave Mr A a cheque, payable to Mr A, for £3,172.

On 13 December 2021, Mr A went to Nationwide again. He requested a cheque for £295, payable to DWP, which he said was due to DWP because of overpaid state pension at the time of Mrs H's death. He also requested a cheque for £425, payable to himself, in relation to a subsequent additional funeral invoice, which he said was for reimbursement for local authority crematorium costs.

There's a subsequent disagreement about whether the £425 cheque was or wasn't issued. In the course of this complaint, Nationwide provided withdrawal slips and the one for £425 has "cancelled" hand-written across it. However, there's a £425 debit shown on the statement for the estate of Mrs H's Nationwide account. So I accept that this payment was debited, and that on 13 December 2021 Nationwide gave Mr A cheques for £425 payable to Mr A, and another cheque for £295 payable to DWP.

On 16 June 2022, the Probate Registry issued Letters of Administration, granting the administration of Mrs H's estate to her brother Mr C.

On 21 June and 25 July 2023, Mr C, to whom the Probate Registry had granted Letters of Administration on Mrs H's estate, contacted Nationwide. He asked Nationwide for all documents that Mr A would have presented to the branch in order to prove his eligibility for the payments. He also asked for copies of the original withdrawal receipts.

Nationwide replied with a copy of the signed withdrawal form for the £3,172, but said it couldn't find the withdrawal form for the £425. The letter said *'When the deceased was first registered Mr A confirmed he was the personal representative. Nationwide would not challenge this.'*

Mr C made a formal complaint to Nationwide on 11 August. He was promised a return call which didn't happen, so he rang on 17 August, again asking for copies of all documents provided to Nationwide by Mr A. Mr C was told that Nationwide wouldn't have asked Mr A to provide any evidence of this authority to administer the estate of Mrs H.

Nationwide issued its final response to the complaint made by Mr C on behalf of the estate of Mrs H. This wrongly stated that the two disputed withdrawals were for £3,125 and £425, when the earlier one was in fact for £3,172. Nationwide said its policy was that:

- when someone notified it of a death, it would ask for identification for the person providing the notification, and a copy of the death certificate. And it would ask the person whether they were the personal representative. If the person said yes, they'd record that they were the personal representative;
- if the person asked to withdraw money for funeral costs, Nationwide would ask for a copy of the funeral invoice. If this was under £5,000, it didn't ask for a letter of administration or any other evidence;
- Nationwide also said that if the balance of a deceased person's accounts was over £50,000, it would need to see a grant of probate before closing any accounts.

In relation to the estate of Mrs H, Nationwide said that its branch had seen a copy of the funeral cost invoice on 29 September, so it had given Mr A the £3,172 cheque. But it hadn't kept a copy of the funeral cost invoice. Nationwide also said it had seen a funeral cost invoice when Mr A returned on 13 December. Again, the branch hadn't kept a copy of anything provided by Mr A.

Mr C, for the estate of Mrs H, wasn't satisfied with Nationwide's final response. He contacted this service. He set out what had happened, and said he wanted Nationwide to refund the payments of £3,172 and £425. He also said he wanted Nationwide to adopt very stringent measures in future in order to prevent events such as these from ever happening again.

Our investigator upheld the complaint by the estate of Mrs H. She said that Nationwide shouldn't have registered Mr A as the personal representative, so the withdrawals had been unauthorised. So she said Nationwide should refund the £3,172, £425 and £295 withdrawals, with 8% interest from the date of withdrawal to the date of settlement.

Nationwide refused to accept this. It said that its process was that it could reimburse an executor who'd already paid the bill, subject to receiving the invoice and a bank statement with their name and address showing the payment. Nationwide said Mr A had shown these, but Nationwide didn't provide any proof of either document, in relation to either the £3,172 or £425 payments.

Our investigator explained to Nationwide that Nationwide's bereavement process stated that a grant of probate or letters of administration were required to confirm a personal representative, where a deceased person's holdings exceeded £50,000. Mrs H's account had exceeded that figure so Nationwide should, under its own processes, have required proof that Mr A was a personal representative – and it hadn't.

The investigator also pointed out that Nationwide's processes set out that it was a personal representative who could make withdrawals for a funeral. And as Mr A wasn't the personal representative, Nationwide shouldn't have confirmed him as the estate's personal representative. This was the situation whether or not Mr A had actually paid the invoices himself.

Nationwide refused to accept that it had acted incorrectly. So the complaint was referred to me for an ombudsman's decision.

### **My provisional findings**

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision.

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this

complaint.

*Preliminary issues – what this decision does and doesn't cover*

In my provisional decision, I first dealt with two preliminary points.

First, I said that this decision was about whether Nationwide acted correctly when it processed the payments for £3,172 and £425 from the accounts of the late Mrs H. It didn't determine whether or not the payments requested by Mr A were ones which the estate should pay for. I explained that that was a matter between the estate and Mr A.

Secondly, there were three payments which Nationwide processed at the request of Mr A. Two were paid as cheques to Mr A, £3,172 and £425, which Mr A told Nationwide were for funeral costs. The third was a payment for £295. This was given to Mr A as a cheque to DWP. The payee was what Mr A requested, telling Nationwide it was for an overpayment claim on the late Mrs H's state pension.

But in the complaint form which Mr C submitted to this service on behalf of the estate of Mrs H, the complaint solely related to the first two payments. And Nationwide's final response letter, and its complaint notes, also don't refer at all to the £295 cheque made payable to DWP. There are rules governing this service, and we can only consider something when it's first been raised as a complaint with the financial organisation. I couldn't see that the estate of Mrs H complained to Nationwide about the £295 payment. So, while I understood Mr C's strength of feeling, I said I didn't have the power to consider the £295 payment. So the provisional decision was solely about the disputed payments for £3,172 and £425.

*What the regulations say, and Nationwide's actions in relation to the regulations*

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the consumer didn't authorise the payments, and the consumer is liable if they did authorise them.

Here, Mr A didn't have the letters of administration and wasn't the personal representative for the estate. So Mr A wasn't the person who had the power to authorise the payments. As I've set out above, this doesn't necessarily mean that Mr A wasn't entitled to refunds from the estate – neither Nationwide, nor this service, has the power to decide that. But as he didn't have the authority to authorise the payments, Nationwide shouldn't have allowed the disputed payments to be processed.

I appreciated that Letters of Administration hadn't been issued at the time of the payments in September and December 2021 – the document awarding these to Mr C is dated 16 June 2022. Some banks will release money for funeral costs before probate or letters of administration have been determined. But they don't have to. And if they do, it's clearly extremely important to take basic care, to ensure that the withdrawals are authorised – including whether the person asking for the withdrawals is entitled to do so.

Here, Nationwide couldn't evidence that it took this basic care to prove that the withdrawals were authorised by someone entitled to authorise withdrawals:

- Nationwide either didn't take, or didn't keep, a copy of the two funeral invoices;
- The money was being paid to an individual rather than to a funeral director, but Nationwide has provided no evidence of a receipted funeral invoice, together with evidence from Mr A's bank or credit card statement that he'd paid it.
- Nationwide didn't take any evidence of identification from Mr A;
- Nor did it require any form or signed statement that Mr A believed he was or would

be a personal representative for the late Mrs H.

If Nationwide did any of this, it didn't keep the evidence – and indeed Mr C said that a named Nationwide employee told him it didn't ever take Mr A's identity or address.

The above would be sensible precautions with any release of funds from a deceased person's accounts. As I've said, it may be that Mr A had paid for the funeral costs and had a genuine claim on the estate – but that's not what the provisional decision determined. The decision determined whether or not Nationwide acted correctly when it released the money. It appeared to have done so without any sensible financial precautions. Indeed in one email to our investigator, Nationwide said *'when we are advised of a bereavement, they will be classed as the personal representative until we received discommendation stating otherwise.'*

This service isn't permitted to order changes to bank processes, because that's the role of the regulator, the Financial Conduct Authority. But I considered that any process which failed to obtain or keep evidence, and just assumed the person in front of them is entitled to funds, was risky in the extreme. And here, Nationwide incorrectly paid someone who didn't have the authority over the account.

#### *Nationwide's own policies*

For completeness, I looked at what Nationwide's own policies said. The Bereavement Policy on its website has a heading "help with expenses – paying for the funeral." This set out that: *"To request funds for the cost of the funeral please complete our "Personal Representative's request for funds to cover costs" form IF21 and return it to us..."*

It set out how to obtain the form and continued:

*"...All cheques will be made out to the Funeral Service provider... If the funeral bill has been paid by the executor, as well as the funeral invoice, we'll also need to see a bank statement or credit card bill with their name and address, showing the payment."*

Quite apart from the omissions I've listed above, Nationwide provided us with no evidence that it followed its own procedures here.

Our investigator also raised the fact that Nationwide's policies say that for any account with a total balance over £50K, Letters of Administration would need to be presented to prove entitlement to closure funds. Nationwide's policies do indeed say this, on page 10 of its 24 page Bereavement guide. And here, Mrs H's estate exceeded £50,000. But the payments made to Mr A didn't close the account. So I couldn't say that Nationwide had to wait for Letters of Administration before it could make the £3,172 and £425 payments it made to Mr A.

#### *Summary in relation to the authorisation of the £3,172 and £425 payments*

In summary, then, I found that:

- The £3,172 and £425 payments were not authorised under the Payment Services Regulations, because Mr A didn't have the power to authorise them;
- Although Nationwide was entitled under its own policies to make these payments before receiving Letters of Administration, it failed to take sufficient care to obtain, or retain, relevant evidence to show suitable financial precaution in relation to the payments.

### *Is the Estate entitled to refunds for the £3,172 and £425 payments?*

I found that these two payments weren't authorised in terms of the requirements of the Payment Services Regulations 2017. But that wasn't the end of the matter. That's because I also needed to consider whether the estate suffered a financial loss as a result of Nationwide's actions. This is set out in the Financial Conduct Authority (FCA) rules for this service, in the section DISP 3.7.2.

Mr C kindly provided a document from the funeral directors. It's headed "*Estimate*" and the total is for £3,172. This included a cremation fee of £835. Mr C also told us that the funeral directors informed him that Mr A had paid the bill by credit card. So it seemed more likely than not that £3,172 was the genuine amount paid for Mrs H's funeral.

As a funeral cost would have to be paid by the estate, it wasn't open to me to find that there was a financial loss to the Estate of Mrs H, when Nationwide reimbursed Mr A with the £3,172 without having the authority to do so.

However, the same wasn't true of the £425 payment. Nationwide's notes said this was for a local authority cremation fee. But the funeral estimate included an item labelled "*cremation fee*." I noted that the document is an estimate, and there might have been additional costs subsequently. And as I've mentioned several times, this decision didn't determine whether or not Mr A had a genuine claim on the estate for the amounts withdrawn. But Nationwide kept no evidence relating to that £425 payment was for. So I couldn't conclude that this was money which the estate would in any case owe.

This meant that I found that Nationwide should pay the Estate of Mrs H £425 to refund the 13 December 2021 payment, together with interest at 8% simple from that date to the date of payment.

### *Compensation for distress and inconvenience*

Finally, when making some awards, this service awards payments for distress and inconvenience. I could see that Mr C, acting for the estate, had a number of frustrations with Nationwide's handling of this complaint. But we don't award compensation for distress and inconvenience where the claimant is a personal representative of an estate. I realised that Mr C would feel this wasn't fair, and I don't underestimate the frustration and upset he'd had. But, technically, it's the late Mrs H who would have been the "eligible complainant" entitled to bring the complaint. The representative brings the matter on the deceased consumer's behalf. So it follows that we can't compensate a personal representative for any impact incurred by them personally when representing the estate.

So my provisional decision was that I intended to uphold this complaint in part. I said that subject to any comments I received by the date for responses, I intended to order Nationwide Building Society to pay the Estate of the late Mrs H £425 to refund the payment made on 13 December 2021 without relevant authorisation; and interest at 8% on this sum, from 13 December 2021 to the date of settlement.

### **Responses to my provisional decision**

Nationwide accepted the provisional decision.

Mr C, for the Estate, didn't accept the provisional decision.

He said that before the funeral, he'd approached the funeral directors, who had told him that

everything had been attended to, and Mr C's input wasn't required either for arrangements or for payment. He said that after he'd been granted Letters of Administration in June 2022, he'd gone back to the funeral directors, who still wouldn't give any information until his solicitor intervened. And even then all he'd been given had been an estimate, not a receipt.

Mr C said that he became aware of Mr A's withdrawals on the Nationwide account when he obtained the statements. He hadn't picked up the DWP payment at that point, because it had been payable to DWP and not to Mr A. He said he strongly felt it was very unfair that his sister's estate was being penalised because he'd missed the £295 withdrawal on the bank statement.

Mr C said that Mr A had no business making any withdrawals on the late Mrs H's Nationwide accounts, and Nationwide shouldn't have allowed them. Mr C believed that Mr A should have kept receipts and later given them to Mr C, as the person with Letters of Administration, for any refund.

Mr C said that the estate had suffered a loss, because money had illegally been removed from the account by Mr A, with Nationwide's assistance. He said that anything that allowed Mr A and Nationwide to be "off the hook" was shocking and shameful behaviour. He said Mr A should only be entitled to any refunds for his costs if Mr C agreed.

Mr C said he was absolutely adamant that all three withdrawals must be returned to the late Mrs H's estate, or a travesty of justice would be committed.

### **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've also considered the responses to my provisional decision.

First, I'll clarify what I can and can't consider. I explained in the provisional decision that this service can only consider an issue which has first been raised with the financial organisation. Mr C didn't raise the £295 payment to DWP as a complaint with Nationwide. Nor did he raise it on his complaint form to this service, and he only raised it much later. I recognise that he says he didn't initially notice this payment on the statement, because the cheque was payable to DWP, not to Mr A. But as he didn't raise it first with Nationwide, this service simply doesn't have jurisdiction under the rules which govern this service, to consider this payment.

In relation to the £3,172 payment, I'm not persuaded that the estate of Mrs H suffered a financial loss. This isn't to say that Nationwide acted correctly in making the payment – because it failed to obtain, or retain, relevant evidence in relation to the withdrawal. But what matters in terms of whether or not the estate gets a refund, is whether or not it suffered a financial loss.

The £3,172 total tallies with the amount on the funeral directors' estimate. And Mr C told us that the funeral directors informed him that Mr A had paid their bill by credit card. So I find that it was more likely than not that the payment related to the cost of Mrs H's funeral. And there would have been a funeral cost to the estate of some sort. Mr C hasn't alleged, for instance, that those particular funeral directors didn't carry out the funeral; or provided clear written evidence that the estate paid a different amount to a different funeral director for Mrs H's funeral. His argument appears to be solely that it was Mr A who paid the bill and was then reimbursed, rather than Mr C. This doesn't equate to a financial loss to the estate, and I can't order reimbursement when there was no financial loss to the estate.

Mr C has argued that there was a financial loss because money had illegally been removed from the account by Mr A, with Nationwide's assistance. But as there would have been a funeral cost for Mrs H, and the £3,172 appears to have been that funeral cost, I find that it's more likely than not that there was no financial loss to the estate. So I do not order a refund of that cost.

The £425 payment, however, is different in that I have no documentary evidence whatsoever for that payment, because Nationwide failed to obtain or retain such evidence. I would emphasise that in upholding the reimbursement to the estate of £425 because of Nationwide's lack of documentation, I am not making a determination saying that Mr A wasn't entitled to the payment from the estate. For instance, I note that the funeral invoice cremation costs were an estimate, and there may well have been subsequent additional funeral costs. As I've said several times, this decision does not determine whether or not the payments requested by Mr A were ones which the estate should pay for. That's a matter between the estate and Mr A. But as Nationwide failed to obtain or retain relevant evidence in relation to the payment, I uphold that part of the estate's complaint.

### **My final decision**

My final decision is that I uphold this complaint in part. I order Nationwide Building Society to pay the Estate of the late Mrs H:

- £450 to refund the payment made on 13 December 2021 without relevant authorisation; and
- Interest on this sum, from 13 December 2021 to the date of settlement. If Nationwide deducts tax from the interest on the award, it should provide the Estate of the late Mrs H with a tax deduction certificate to show how much it has deducted.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs H to accept or reject my decision before 21 May 2024.

Belinda Knight  
**Ombudsman**