

The complaint

The estate of Mr J (the estate) complains Ravenscroft Investments (UK) Limited accepted two withdrawal instructions, totalling £52,000, without the necessary checks put in place.

What happened

In 2012 Mr J became a customer of a business which is now known as Ravenscroft and in July 2013 he signed an advisory agreement with them. As part of the agreement Mr J's wife, Mrs J, was given third-party authority which allowed her to give instructions on the account. Ravenscroft periodically reviewed this arrangement and Mrs J continued to have third-party authority.

In February 2016 a Lasting Power of Attorney (LPA) for Mr J's property and financial affairs was verified by the Office of the Public Guardian (OPC). It confirmed the Attorneys were Mrs J and a firm of solicitors. They had joint and several liability. The LPA wasn't used at this time and would only be used if Mr J lacked the mental capacity to make his own financial decisions.

On 6 February 2023 Mrs J called Ravenscroft about Mr J's health. She was arranging to move Mr J into a care home, costing around £1,600 per week. She instructed Ravenscroft to raise £32,000 and pay the money into her account so she could arrange to cover Mr J's care home bills.

On 23 May 2023 Mrs J called Ravenscroft again confirming Mr J's health had worsened, meaning he would be in the care home on a permanent basis. She needed to plan for care home fees and instructed Ravenscroft to raise a further £20,000 withdrawal and pay the money into her account.

In June 2023 the estate arranged for Mrs J to be removed both as an Attorney on the LPA as well as her third-party authority on the account. In August 2023 the OPC confirmed Mr J had mental capacity to make his own decisions about his property and financial affairs. Mr J sadly passed away in November 2023.

Mrs J arranged to repay over £35,000 to the estate – and nearly £6,000 was paid to the care home for fees. There remained over £10,000 unaccounted for.

The estate complained to Ravenscroft saying this money should have never been released without further checks on Mr J's mental capacity. It said the funds were withdrawn under false pretence. The estate asked and was told that Ravenscroft completed the withdrawals using the LPA authority.

The estate also said that Mr J's data had been breached by Ravenscroft when they divulged information to Mrs J's nephew in June 2023.

Ravenscroft investigated the complaint and said they hadn't done anything wrong with regards to the withdrawals. They explained that the third-party authority had been used to allow for the funds to be withdrawn, rather than the LPA they had confirmed to the estate

previously.

Ravenscroft acknowledged a data breach with Mrs J's nephew and logged this internally.

The estate didn't agree with Ravenscroft's reply and said the response contradicted the actual method used to withdraw the funds i.e. LPA not the third-party authority. The estate believes Ravenscroft's conduct was below that expected of a regulated business and that their actions have caused a significant amount of distress and emotional damage when the family were saying goodbye to a dying family member. They referred their complaint to our service.

One of our investigators looked into the complaint and didn't uphold it. They confirmed that the withdrawals were made in line with the third-party authority Mrs J held at the time. They also confirmed there wasn't a requirement on Ravenscroft to check Mr J's mental capacity, given the third-party authority Mrs J held.

The investigator acknowledged the data breach caused by Ravenscroft but said they couldn't award compensation to the executors for this breach. The estate disagreed with the investigator, saying Ravenscroft failed to adhere to the necessary checks. As the matter hasn't been resolved the complaint has been referred to me 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'm aware that I've summarised this complaint and responses briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here – which is to determine whether Ravenscroft should have done more before allowing £52,000 to be withdrawn from Mr J's investment. If there is something I haven't mentioned, it isn't because I've ignored it. I'm satisfied that I don't need to comment on every individual point or argument to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as an alternative to the courts.

I do appreciate Mrs J withdrew a significant amount, across two transactions, on the basis of paying care home fees which later appeared to be a small fraction of the overall withdrawal. But I don't believe Ravenscroft has acted unfairly or unreasonably in its answering of the complaint.

I've reviewed the evidence available to me to determine if Mrs J held the appropriate permission to make withdrawals from Mr J's investment at the time. It isn't in dispute that Mrs J held both third-party authority for the account as well as being an Attorney for the LPA Mr J put in place in 2016.

The main concern from the estate is why the LPA authority was used as Mr J was deemed to have mental capacity months after the withdrawals were made. I've seen Ravenscroft's call notes for both withdrawals and there is reference to having power of Attorney to arrange these. So, even though Ravenscroft have said the third-party authority was used at the time, I think it's more likely Ravenscroft initially used the LPA authority to allow the withdrawals.

It may be the case that the LPA authority should not have been used here, given Mr J still had mental capacity. However, the fact remains that if it had not been used to authorise the withdrawals, or if it had been questioned at the time, Mrs J still had valid third-party authority to use instead. The terms and conditions for Mr J's account say that instructions from

anyone who had third party authority would be accepted in good faith. So with or without the LPA being used, Ravenscroft did not do something wrong when they authorised the withdrawals, because Mrs J did hold the valid authority to make them.

As I'm satisfied Mrs J was authorised to make these withdrawals at the time, I've also considered if Ravenscroft should have done anything differently before releasing the funds. Put another way, when Mrs J told Ravenscroft that the funds were being used to pay for Mr J's care home fees, should they have questioned her reasoning for the withdrawals, or carried out further checks with Mr J prior to releasing these funds?

I've thought about this carefully. And in doing so, it's important to take into consideration the reason Mrs J gave for each of the withdrawals. Ravenscroft were informed that Mr J's circumstances had changed significantly – to the point where there was a need to cover care costs. As mentioned earlier, this was initially on a temporary basis and then permanently.

Ravenscroft should always be acting in the interest of its client. But unless there was something to make them question the withdrawals, I wouldn't expect them to carry out further checks if an instruction is given by an individual who is authorised to do so. Here, I haven't seen anything to suggest Ravenscroft had reason to question Mrs J's intentions or her requests, therefore I feel reasonable steps were taken when the withdrawals were made.

Turning to the estate's concerns about Mr J's financial data being disclosed to Mrs J's nephew. I appreciate their concerns about this and I'm pleased to see Ravenscroft have logged the data breach internally. In matters like this we can award compensation to consumers who have suffered financial loss or have been distressed or inconvenienced in the way a business has handled their personal information.

On this occasion I haven't seen anything to suggest the estate of Mr J has financially suffered as a result of the data breach. I also can't award compensation for distress and inconvenience to the estate as, while it is authorised in law to bring the complaint to us, any inconvenience incurred to the executors personally cannot be compensated for.

If the estate has further concerns about the data breach then they can contact the Information Commissioner's Office, if they haven't already done so. They regulate compliance to data protection laws in the UK and can complete their own investigation into what's happened.

My final decision

For the reasons I've explained above, my decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr J to accept or reject my decision before 21 February 2025.

Andy Hurle
Ombudsman