

## The complaint

The Estate of Mr H complains about Nationwide Building Society as they allowed money to be withdrawn from Mr H's account incorrectly.

Mr B, as the executor to Mr H's Estate, is authorised by law to bring the complaint on behalf of the Estate.

## What happened

In November 2016, Mr H signed a Lasting Power of Attorney (LPA). Two of his family members, a son, and a daughter, were appointed as attorneys.

The LPA granted the attorneys power to act "*Jointly and severally.*" It also set out that the attorneys could act: "*As soon as my LPA has been registered.*" The explanatory note said "*While you still have mental capacity, your attorneys can only act **with your consent.** If you later lose capacity, they can continue to act on your behalf for all decisions covered by this LPA.*"

The attorneys signed the declaration, and the LPA was registered by the Office of the Public Guardian in January 2017. It was then retained at a solicitor's office.

Mr H made his final Will in October 2017 and sadly passed away in January 2021.

After Mr H's death, the Estate contacted Nationwide and disputed £141,782.61 in cash withdrawals made by Mr H's daughter. These withdrawals had started in February 2017, were mainly for £20,000 each, and had been made at varying intervals between three months and a year.

Nationwide responded and explained that in February 2017, when the first withdrawal was made, Mr H's daughter had told them she had power of attorney and provided a document. It's not clear whether this was a letter from the Office of Public Guardian, or a photocopy of the first page of the LPA, but it wasn't the full LPA, as this was held by a solicitor's office.

Nationwide wrote multiple times to Mr H's daughter asking for a copy of the full LPA. While a copy was never provided, Nationwide continued to allow her to make large withdrawals. It was only after Mr H's death that the Estate found out and complained.

Nationwide accepted that they hadn't followed the standard procedures and hadn't obtained a copy of the full LPA. But they didn't agree they had been wrong in allowing Mr H's daughter to make the withdrawals, and said they weren't responsible for any loss resulting from the withdrawals. They said that ultimately it appeared from the LPA that she had authority to make the withdrawals.

Nationwide said that during the period of the withdrawals there had been no concerns raised by Mr H. They acknowledged that they had a duty to carry out the transactions with reasonable care and skill, including ensuring the transactions had been properly authorised,

and said no-one in the branch had raised concerns that Mr H's daughter was acting outside of her authority.

Nationwide apologised for not following their standard procedures when Mr H's daughter asked to be registered as an attorney on the account. But they said they weren't liable to refund the money, because the LPA said that Mr H's daughter did have the authority to act as attorney and there wasn't sufficient evidence to show Mr H hadn't agreed to the payments. They said they believed that if they had insisted on a copy of the LPA, Mr H's daughter would have provided it, so the payments would still have gone ahead.

The Estate of Mr H didn't accept this. It asked for a copy of the "standard procedures" which Nationwide had admitted it hadn't followed. It said that repeated requests to Mr H's daughter for the full LPA, which still wasn't provided, should have raised concerns at the branch. It pointed out that if Nationwide had persisted and had seen the LPA, it would have shown there was another attorney that Nationwide could have contacted to confirm if Mr H consented to the payments. The Estate asked if Nationwide had ever asked Mr H himself about the withdrawals.

The Estate also said the LPA had been held securely by solicitors throughout this period, and no request for a copy of the LPA had been made to them by Mr H's daughter. Because the Estate wasn't satisfied with Nationwide's response, it contacted this service.

Our investigator didn't uphold the Estate's complaint. He said that Nationwide hadn't obtained a copy of the LPA but had allowed Mr H's daughter to make withdrawals without being aware of the terms of the LPA.

But even so, the investigator concluded that if Nationwide had obtained the full LPA, they would have allowed the withdrawals to take place, because Mr H's daughter had the authority to make them. So, he didn't think Nationwide's error had made any material difference.

The investigator also explained that one of the Estate's requests was for Nationwide to provide full disclosure of the information they held for the late Mr H's accounts and those of Mr H's late wife. The investigator said he couldn't provide this, and the Estate should approach Nationwide for the information.

The Estate didn't accept this. In summary, it said that:

- After the LPA had been registered, it was sent for safekeeping to a solicitor's office because the intention was that the LPA shouldn't be put into effect while Mr H still had mental capacity;
- Sections 5 and 8 of the LPA said that *'your attorneys must always act in your best interests'* and *'while you still have mental capacity, your attorneys can only act with your consent.'*
- Nationwide had been negligent in the way they had handled this matter, and had breached their duty of care;
- The attorney(s) could only act with the donor's agreement while the donor had mental capacity, and they must also follow the principles of the Mental Health Capacity Act Code of Practice. There had been no evidence put forward that Mr H hadn't had the required mental capacity;
- Of the eight cash withdrawals, Mr H had signed one, and his daughter had signed the other seven. Of those other seven, Mr H had signed a letter of authority for two, leaving five which had no evidence of Mr H's knowledge of them – which breached the LPA requirements. The Estate had also queried the authenticity of Mr H's signature on the letters of authority, especially the last one.

The Estate requested that Nationwide reimburse the withdrawals which hadn't been authorised by Mr H in full. Because the Estate disagreed with the investigator's opinion, the complaint was passed to me for a final decision.

On 18 November 2024 I sent my provisional decision. It said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I would like to acknowledge the time it has taken for me to do this, however given the nature of this complaint, I wanted to make sure I had considered everything as thoroughly as possible.*

*Having done so, and after looking through everything, I am not upholding this complaint and awarding redress to the Estate. I know this is something that will come as a disappointment to Mr B and the Estate, so I will explain why I have reached the decision I have.*

*I would like to start by explaining that at our service, our rules state that we can only consider complaints that are brought by eligible complainants. The rules which govern our service's powers and jurisdiction are set out in the Dispute Resolution rules (DISP) which form part of the Financial Conduct Authority's handbook.*

*DISP 2.7.2 states:*

*"A complaint may be brought on behalf of an eligible complainant (or a deceased person who would have been an eligible complainant) by a person authorised by the eligible complainant or authorised by law. It is immaterial whether the person authorised to act on behalf of an eligible complainant is himself an eligible complainant."*

*Mr H would have been an eligible complainant in relation to the alleged losses by virtue of being a consumer under DISP 2.7.3R (1) and holding a customer relationship with Nationwide under DISP 2.7.6R (1) by being the account holder who Nationwide agreed to provide a financial service to. So, Mr B as the executor is authorised by law to bring the complaint on behalf of Mr H as a deceased person. But this doesn't mean I can consider every loss that has been brought to my attention.*

*There are multiple concerns raised by the beneficiaries to Mr H's will which prompted the complaint being brought by Mr B as executor. But the beneficiaries aren't themselves eligible complainants. They don't hold a valid qualifying relationship listed under DISP 2.7.6R to bring a complaint about losses they have suffered as they don't arise from any valid relationship they personally hold with Nationwide. So I cannot directly consider losses they allege they have suffered, which would include any distress or inconvenience they experienced. Instead my role is limited to consider only losses allegedly experienced by Mr H and his estate that arose from his customer relationship with Nationwide.*

*Having reviewed the complaint in its entirety, I can see that it's been mentioned in an email from Mr B that there isn't any evidence to suggest Mr H wasn't aware that the money was being withdrawn. He said, "Finally I need to mention that in his last Will Mr H had excluded four of his ten children from his Will and neither they nor the remaining beneficiaries have produced evidence that their father was not aware of their sister's actions which in some transactions had apparently been countersigned by her father".*

*I appreciate there may be contrary views in terms of the beneficiaries under Mr H's will, but I do find what Mr B has said here is key.*

*In order to fairly award loss, I have to firstly determine that the payments in question were done without Mr H's agreement, and secondly that it would represent a fair and reasonable outcome to award them as losses to his Estate. Simply put, I have found there isn't a sufficient basis to do either, although I do recognise how emotive and important this complaint is to the beneficiaries who would benefit from an award to Mr H's Estate under the terms of Mr H's will.*

*I have considered carefully what has been said about suspicions regarding whether Mr H's signature was genuine on certain documents, such as the letters of authority, in particular, the last one. And, I have not taken likely that Nationwide admittedly did not follow its own procedure in terms of not getting a copy of the LPA. But I haven't seen sufficient or persuasive evidence to demonstrate the signature in question wasn't genuine or that Mr H, more likely than not, didn't agree to the payments in question. Unfortunately, as Mr B himself commented, the only people who really know whether Mr B agreed to the payments, were Mr H and the attorney in question.*

*From the information I have, it looks as though the withdrawals were made as follows, and I have kept in mind that some payments were authorised by Mr H:*

<b>Date</b>	<b>Amount</b>	<b>Withdrawn by</b>
3 February 2017	£21,782.61	Mr H's daughter
24 May 2017	£20,000	Mr H's daughter
7 December 2017	£20,000	Mr H's daughter
16 July 2018	£22,000	Mr H in person in the branch
19 December 2018	£20,000	Mr H's daughter
17 June 2019	£20,000	Mr H's daughter with supporting letter of authority for the withdrawal signed by Mr H
6 December 2019	£20,000	Mr H's daughter
21 December 2020	£20,000	Mr H's daughter with supporting letter of authority for the withdrawal signed by Mr H

*The attorney was Mr H's daughter who was caring for him. I can also see he was living with her and it appears there were potentially significant expenses incurred as part of this arrangement, which may provide a foundation to the payments, and that in this context Mr H may well have agreed to them. During a call with our investigator on 5 March 2024 Mr B said there was no evidence one way or the other to show what happened. He also said that Mr H willingly went to live with his daughter and that they had a purpose-built lodge completed for him to live in on the grounds. Mr B also said he thinks Mr H would have wanted to contribute to this as well, however it's difficult to know as we aren't now able to ask him.*

*Of course, it may be that he didn't, and the withdrawals didn't in any way benefit Mr H and he was completely unaware of them, but I merely make these points to relay that the evidence and information I have means I am not satisfied I can make a fair and reliable finding of fact that Mr H didn't agree to the payments.*

*The above doesn't mean that I don't recognise Nationwide should have followed its procedure, and that the payments being cash withdrawals ought to have raised some concern, as well as the failure to obtain a copy of the LPA. But, even if I determined there was sufficient evidence to satisfy me that Mr H didn't agree to the payments, I find it would be inappropriate for me to award financial loss to Mr H's Estate. I'll explain why.*

*On reading Mr H's will, the attorney alleged to have caused the loss to Mr H, is a residuary beneficiary. So, were I to award loss to Mr H's Estate, the terms of the will would require that*

*loss to be then in part be distributed to them – effectively meaning they would have benefit from alleged wrongdoing.*

*As a service we have no power to alter Mr H's will or the legal requirement to distribute Estate assets according to the will. Only a valid deed of variation or court of law could alter beneficiaries' entitlements under the will.*

*While I empathise with the Estate in this case, and I understand the concerns it holds in relation to Nationwide not following its procedure, together with the cumulative sum withdrawn on the account over time, I am not upholding this complaint and awarding it losses. I do hope those involved feel reassured that someone impartial has taken a look into this case and provided a fair and balanced decision."*

Nationwide responded and said they had nothing further to add.

The Estate however, provided further comments on my provisional findings. I have summarised what was said below.

The Estate asked for full disclosure from Nationwide of the correspondence that took place between Mr H's daughter, another child of Mr H, and Mr H himself. In response to this, our service explained that if the Estate wish for any documentation to be provided by Nationwide, it would need to approach them directly.

The Estate also said that all possible avenues hadn't been fully explored. It asked about the statements that would have been sent to Mr H, whether Mr H was spoken to separately when he went into the branch with his daughter, whether the signature on the letter of authority was checked, whether Nationwide carried out any checks to determine whether Mr H still retained mental capacity, and what expenses Mr H was responsible for.

The Estate also said that should Mr H's daughter benefit from any award (should this complaint be upheld), it would be less than what she has at present as she'd need to pay back to the Estate what she took and have that divided by six. The Estate also asked whether Nationwide could pay back any money to the Estate in an acknowledgment of a wrongdoing on their part.

Additional submissions outlined that Mr H's daughter handled Mr H's finances, among other things, and so he never would have known that funds had been taken. The Estate also argued that the signature provided for the last withdrawal was not Mr H's, and that no withdrawals should have been allowed without the LPA document being provided.

Mr B also commented that while the complaint is in relation to the money, it is also about Nationwide's conduct which has had a significant effect on the outcome for the beneficiaries. He reiterated the argument that no withdrawals should have been allowed without the correct documentation, that being the LPA.

### **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 would like to thank the Estate for providing the additional comments in response to my provisional decision. Having taken everything into account though, my decision hasn't changed. I know this will come as a disappointment to Mr B and the Estate, and I can

understand the strength of feeling surrounding this complaint, so I will explain why my decision remains the same.

It isn't in dispute that Nationwide acted outside of their usual process when allowing the transfers to be made without having received the full LPA document. Nationwide have admitted this, however they maintain that had they continued to ask for the LPA, it would have been provided.

Regarding the comment around the statements sent to Mr H, and whether he was spoken to separately or assessed when in the branch, I can understand why the Estate is asking these questions. However, I'm satisfied there is insufficient evidence and information to make a reasonable finding of fact that Mr H didn't or wouldn't have agreed to the payments in dispute. I don't find there is verifiable evidence to show Mr H didn't have capacity, and I don't find non receipt of statements would show Mr H wouldn't have consented to the payments. Although Nationwide didn't follow the process they should have by not obtaining the full copy of the LPOA, I don't find its conduct and the surrounding evidence reasonably demonstrates Mr H suffered losses, such that his Estate should now be awarded them.

I have already commented on Mr H's signature in my provisional findings set out above, and my view on this remains the same.

In relation to the point regarding Mr H's daughter ending up with less than she has now should we find in the Estate's favour, it may help for me to explain that if that were the case, we wouldn't be asking Mr H's daughter to pay anything back to the Estate. Our service has the power to direct a business to make a payment, who in this case is Nationwide. We would not have the power to require Mr H's daughter to make any payment whatsoever. So, as explained above, if I were to award loss to Mr H's Estate, by process of law the Estate is meant to pay all the residuary beneficiaries and we could not alter the legal effect of the will – effectively meaning Mr H's daughter would have benefit from the alleged wrongdoing.

Overall, I want to express that I have given full consideration to everything provided by the Estate in this case. But as explained in my provisional decision, in order to fairly award loss, I would have to firstly determine that the payments in question were done without Mr H's agreement, and secondly that it would represent a fair and reasonable outcome to award them as losses to his Estate. Having considered everything, I have found there isn't a sufficient basis to do either, although I do recognise how emotive and important this complaint is to the beneficiaries who would benefit from an award to Mr H's Estate under the terms of Mr H's will.

Because of this, I will not be asking Nationwide to do anything further.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the Estate of Mr H to accept or reject my decision before 7 January 2025.

Danielle Padden  
**Ombudsman**