

The complaint

Mrs S complains as executor of the estate of Ms M, that TSB Bank plc allowed her brother to make frequent withdrawals of cash from the late Ms M's account under a power of attorney (PoA).

What happened

Ms M passed away in July 2022. Prior to that Mrs S advises that Ms M had spent most of the previous year in hospital, being discharged for only a few days at a time. She and her brother and sister had all been appointed under a PoA. She became aware in May 2022 that her brother, Mr M, had registered his PoA with the bank and told her that he had been withdrawing money from Ms M's account to avoid paying care home fees.

As a sole executor, when reviewing Ms M's accounts with her lawyer, Mrs S discovered that Mr M had been removing large cash sums from Ms M's account, over around £2,000 per month. Further, when Mr M notified TSB that Ms M had died, TSB paid him directly in respect of invoices he produced for funeral expenses.

Mrs S complained that Mr M had removed the cash sums without Ms M's authority and hadn't used the money for Ms M's benefit. She also asserted that Ms M had previously paid Mr M a lump sum to cover her funeral expenses. She felt that TSB should have recognised that the transactions were fraudulent and that it failed to protect its vulnerable customer. Also that it shouldn't have paid money directly to Mr M for funeral expenses.

Mrs S reported the matter to Action Fraud who forwarded it to the police. She hasn't heard anything from the police about their investigation. She says that the estate's lawyers have tried to contact Mr M about the funds but he has been evasive in his replies.

TSB said having reviewed the account, it could see Mr M had access to it as PoA and as the transactions were chip & PIN they wouldn't trigger a security check. And Mr M had registered the PoA with it. And if Mrs S was disputing any transactions, she needed to contact the Office of the Public Guardian (OPG). With regard to the funeral expenses, it had paid these following receipt of full invoices from Mr M.

Mrs S further complained that TSB hadn't kept her up to date with its investigation.

On referral to the Financial Ombudsman, our Investigator said they didn't think the transactions on the account were so unusual in nature that TSB ought to have acted differently. And that the information provided by TSB confirmed that invoices for funeral expenses were produced by Mr M before the payments were made.

Mrs S disagreed, and felt that TSB had breached its duty of care towards Ms M in not recognising such large and unusual transactions on the account.

The matter has been passed to me for an Ombudsman's consideration.

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.

Firstly, I don't know if Mr M fraudulently removed monies from the account. As I understand it, Mrs S hasn't yet heard from the police concerning their investigation or whether indeed they intend to carry one out. She says she's been advised that the police might regard it as a civil dispute. But that is a matter for the police and if appropriate the OPG. This decision concerns whether TSB should have been alerted to the payments coming out of the account and if so, whether it should have taken some action to prevent that.

I note first of all that all three siblings had PoA, but only Mr M chose to register his with TSB and to use it. Secondly Mrs S has told us she was aware in May 2022 that Mr M had registered his PoA and had told her that he was "helping himself" to Ms M's money. However, she didn't report this to TSB. Before May 2022 she says she and her sister were not aware their brother had been given access to the bank accounts so never thought there was a need to make the bank aware of Ms M's very poor health and mental capacity. So it would appear that there was nothing, apart from Ms M's age, that might have alerted TSB concerning her infirmity or mental capacity.

On the face of it, there was unusual activity on Ms M's account in the six months or so prior to July 2022. In that time cash payments withdrawn from the account totalled £12,500 at the rate of £2,000 or more a month. We asked TSB to supply statements from before December 2021 so that I could compare the usage of the account. I've seen statements from January 2019 onwards, and I've also seen TSB's notes of when Ms M visited the bank over that period.

What is evident from those statements is that Ms M frequently withdrew cash sums of £1,000. This was done through branch visits and the cashiers noted that Ms M preferred to use cash whilst alerting her to the ability to use a debit card and to the possibility of scams or frauds. Ms M also on two occasions transferred large capital sums to an ISA account. On at least one occasion she withdrew £2,000 and on a number of other occasions withdrew £500 from the ATM. So we know that Ms M was personally responsible for withdrawing cash from the branch. It's not possible to tell whether she personally withdrew cash from the ATM.

However if I am considering TSB's possible liability, I don't think that the activity on the account after December 2021 was greatly different from that before then. I bear in mind that, given that there were no alerts on the account about Ms M's mental capacity or health, TSB would have had to rely on its system alerts for possible fraud or unusual transactions in terms of the amounts. And I don't think from the evidence, that TSB would have been alerted to the use of the account by Mr M. And TSB at the time didn't have any reason to think that Mr M registering his PoA meant that he was going to act in breach of his obligations (if he did, which as I say I can't make a finding about).

With regard to the funeral expenses, I think that different banks have different processes for this. TSB doesn't appear to insist that any payment must be made directly to a funeral director. From its website it says:

"You can choose to pay the funeral bill and other expenses with any money left in their account. We can help you use their money to pay for:

- *Funeral costs (we'll need the full and final invoice)"*

And it says that it paid only after receiving the full invoices. It has noted on the bank

statement exactly who the payments had been made to. I understand from Mrs S that sometime prior to her passing, Mr M had received a payment from Ms M so that he could pay her funeral expenses. I've seen no evidence that TSB was aware of that and we haven't been told by Mrs S that Mr M didn't use the money from the account to pay the funeral expenses. So I don't think that TSB did anything wrong in this respect.

With regard to Mrs S's assertion that Mr M asked for communications from TSB to be sent to him, I'm aware that it was Mr M who advised TSB of Ms M's passing. And that TSB corrected the position when Mrs S told it that she was Ms M's sole executor. I don't know if TSB sent any information to Mr M but, apart from the funeral expenses, I don't believe that it released any further monies to him.

Finally, I know that Mrs S is concerned about the service she received from TSB after she notified it of the possible fraud on the account in that it didn't keep her informed or updated. As our Investigator has told her, we can't award compensation to an estate for distress or inconvenience. And it does appear that TSB's fraud team wouldn't be involved unless and until the police conclude their investigations.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms M to accept or reject my decision before 19 March 2025.

Ray Lawley
Ombudsman