

## The complaint

Mrs M is unhappy with the amount of information Yorkshire Building Society (YBS) requires her attorney under a Lasting Power of Attorney (LPA) to provide before it can be registered.

Mrs M's complaint is being made on her behalf with support from one of her attorneys, who I'll refer to as S.

## What happened

In November 2022, Mrs M's LPA was registered with the Office of the Public Guardian. Mrs M appointed two attorneys to act on a joint and several basis. Mrs M elected for the attorneys to be able to make decisions only when she doesn't have mental capacity.

In early 2024, Mrs M decided she wanted to formally register the LPA with the building society so things were prepared should she lose her mental capacity. S explains that she went into branch beforehand to find out what she needed to do and what documentation to provide. When Mrs M and S went into branch together to register the LPA, S explains the process was more extensive than YBS had previously led her to believe, requiring two additional application forms to be completed. S describes the level of detail required by YBS as irrelevant, intrusive and very personal. S says she felt uncomfortable and didn't wish to complete the forms, recalling that Mrs M became anxious about what she was going to do to manage her affairs without support. YBS said it was unable to register the LPA without the forms being completed.

S explains that she has been going into branch to assist Mrs M for the past seven years, so it is unclear why it is being obstructive now, especially as the attorneys have already been accepted by the Office of the Public Guardian. S considers the registration has been blocked by unnecessary obstacles and misinformation, highlighting confusion around whether YBS was going to carry out a credit check on her. S stresses that she is not a customer, Mrs M is the customer, and S has been delegated to act in Mrs M's best interests with her full consent. S explains that the process is far more involved than what was in place with Mrs M's other financial institutions who have accepted the LPA without this level of information. As the situation reached a stalemate, Mrs M and S complained.

YBS issued its final response in April 2024. It said that as part of its onboarding checks, it is required to understand the attorney as a customer, and it has a duty to collect this information under regulations. It pointed out the information is required because an attorney has the same access and ability to transact as the donor.

Unhappy with the position, S referred a complaint about her and Mrs M's experiences to this service. One of our Investigators considered the matter, but they did not recommend that it should be upheld. Our Investigator concluded YBS had acted fairly. They highlighted that YBS's registration process did change in January 2024 to introduce a question around salary but concluded that YBS is entitled to put in place a standardised process that everyone who has access to an account must complete. They explained that a credit reference agency would run an identification and verification of S's address as a soft check rather than a full credit check.

Mrs M and S didn't agree and asked for an Ombudsman to consider the complaint. S explained that she is well known in the local branch and there has never been a problem acting on any instruction that has been given across the seven-year period when she has attended branch to support Mrs M. S highlighted that it is only now that YBS are seeking to block that assistance and only now that YBS is seeking verification of S's status. S said that her personal finances had no bearing to her role as attorney and it is for the Office of the Public Guardian to police the character of attorney applicants.

#### *My further investigation*

When the complaint was referred to me, I had further questions for both parties.

I contacted S to ask if the LPA document on our file was the most current one. I highlighted that section 5 of the LPA said that the attorneys could only make decisions when Mrs M doesn't have mental capacity, but in the copy of the YBS registration form that S had begun to complete in branch, she had ticked the box to say Mrs M has not lost capacity.

I suggested it could be too soon for YBS to register the LPA because Mrs M currently has mental capacity, something that has perhaps not come to light before now because the focus has been on the registration process itself and not on whether it is time to register it or not.

I suggested this could have implications for the complaint as I'm not able to consider whether the process YBS requires is too onerous and disproportionate in a situation where the LPA currently isn't required.

S responded and confirmed the LPA was current. S said loss of mental capacity is not mandatory just for the purpose of registering with financial institutions in preparation that the LPA may be needed in the future, and financial institutions cannot impose restrictions in this regard. S highlighted that YBS says that its registration process is mandatory, but it has also permitted her to act on Mrs M's behalf without question, challenge or ID identification since 2017. S explained that if Mrs M does lose mental capacity, without intervention from the Financial Ombudsman, her money will be locked in her YBS accounts and be inaccessible to her appointed attorneys, resulting in suffering to Mrs M.

S said she had spoken to the Office of the Public Guardian and there is no legislation to prevent attorneys registering Power of Attorney documentation in advance of need. S highlighted that pre-registration is at Mrs M's conscious request and with her full consent. S suggests that YBS would have accepted the registration without question if she had completed the forms in the branch. S highlighted inconsistencies and concerns with the questions YBS is asking and said YBS is not being fair or reasonable.

I contacted YBS to understand more about its approach and to ask whether it allows attorneys to pre-emptively register a Power of Attorney in situations where the attorney is not required to formally start acting. YBS said it cannot register a document that has restrictions stating the document can only be used when the donor has lost mental capacity, and it cannot add a Power of Attorney to an account unless the attorney is actively acting for the donor. It said it had spoken to Mrs M's branch and it does not agree with S's description that she has already been accessing Mrs M's account on her behalf. It says it has not given out any information about Mrs M's account or taken instruction from S without Mrs M being present and fully verified.

#### *My provisional decision*

I issued a provisional decision in April 2025 setting out why I wasn't minded to uphold this complaint, nor was I minded making any order or award. I've reproduced my provisional findings below:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I'm very aware that I've summarised this complaint above in far less detail than S has provided. I'm also not going to cover all points raised by S. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact the decision I'm making.*

*I do very much understand the frustration of both S and Mrs M in relation to this matter. Mrs M made a Power of Attorney and appointed S as an attorney so that she could help her with financial decisions when she is no longer able to make them. The Power of Attorney is supposed to relieve Mrs M of the stress of dealing with money and other matters, and I can appreciate that she wants peace of mind that everything is in place before it may be needed.*

*I've looked carefully at the LPA document. Mrs M had the choice for it to be used either when she lacks mental capacity to make financial decisions for herself, or as soon as the LPA is registered. Mrs M elected for her attorneys to be able to make decisions only when she doesn't have mental capacity. The LPA form advises donors to be careful about this choice. It says "this can make your LPA a lot less useful. Your attorneys might be asked to prove you do not have mental capacity each time they try to use this LPA."*

*I accept that the LPA has been registered with the Office of the Public Guardian, and I understand that S does not want or need to make decisions on Mrs M's behalf at this moment in time. But the LPA is quite clear that it can only be used at a time in the future when Mrs M lacks the capacity to make decisions for herself. As S isn't currently required to take the lead on managing Mrs M's financial affairs, I don't think YBS is treating them unfairly by being unable to pre-emptively register the LPA before it is needed.*

*Every firm has its own process for registering a Power of Attorney, so it is no surprise that S and Mrs M have had mixed experiences, with some firms willing to pre-emptively record the LPA before Mrs M needs help with managing their finances. But this is by no means universal, something that is recognised in the Office of the Public Guardian's guidance when it says that banks and other financial institutions sometimes want written confirmation that a donor does not have mental capacity before they'll recognise an attorney's authority to act under an LPA. Registering a Power of Attorney in advance can have unintended and unforeseen consequences. Some financial businesses have limitations with systems which mean they won't allow a donor to continue to operate an account themselves once a Power of Attorney is recorded, a situation that would be undesirable for Mrs M who remains capable of managing her own affairs.*

*I can appreciate my position is most unwelcome news to both Mrs M and S, especially as this is something that only came to light as part of my investigation into this matter, many months after Mrs M and S first went into branch. But I am also mindful that YBS may not have had the opportunity to review the LPA documentation very closely at that time given that the application process did not proceed. S suggests that YBS would have registered the LPA without question if she'd completed the forms in the branch, but I consider it to be more likely than not that YBS would still have needed to be satisfied that the Power of Attorney*

*document allowed the attorney to operate the account(s) held by the donor before registering it.*

*As I consider that it is currently too soon for the LPA to be registered with YBS because S is not needing to act for Mrs M, I do not need to go on to make any finding on the appropriateness of YBS's current registration requirements and whether they are onerous and disproportionate. It's possible that YBS's processes and procedures could change in the future, and it's also possible that the LPA may never need to be used. Against this backdrop, it is not prudent for a free dispute resolution service to devote additional resource towards answering questions that may not need to be addressed.*

*I know Mrs M and S will strongly disagree with my stance here and will be concerned about the way forwards for them. S has indicated that both attorneys will not agree to provide the information YBS currently requires. Should the attorneys need to use the LPA at a later date, it remains open to them to raise a fresh complaint if they have concerns about the processes and procedures for registering the LPA with YBS at that time.*

*S has told us that Mrs M currently holds a savings account with YBS. It remains open to Mrs M to consider whether she still wishes to hold her savings with YBS or whether she wishes to move the funds elsewhere.*

*I recognise this has been a protracted and difficult process for both Mrs M and S, and they strongly feel YBS has a case to answer. Our rules do not allow representatives to complain about the service provided to them when they are acting on behalf of someone else. S has highlighted her own experiences as a representative of Mrs M. I do not have the power to award compensation for any distress and inconvenience caused to S personally.*

*I do have the power to award compensation to Mrs M if YBS has done something wrong and she has lost out as a result. But Mrs M hasn't suffered any financial losses. From what S has described, this situation has had an emotional impact on Mrs M. But I am not currently persuaded that YBS has made a mistake that I could fairly require it to compensate Mrs M for. I don't think I can fairly conclude that YBS missed a clear opportunity to tell Mrs M and S that it would not be able to register the LPA sooner when no application was formally submitted for consideration.*

*I'm sorry to disappoint both Mrs M and S. All they wanted to do was be well prepared for a time when Mrs M may not be able to make her own decisions. But for the reasons explained above, I do not consider there's anything further to be done at this moment in time.*

## **Responses to my provisional decision**

YBS did not reply to my provisional decision.

S replied on behalf of Mrs M. In summary, she said:

- Their sole concern is about helping Mrs M and giving her peace of mind, so they were surprised to learn that any type of compensation award had the potential to be considered in these circumstances.
- Mrs M will incur a financial loss if my provisional decision remains unchanged, and the uncertainty around whether Mrs M's money can be accessed in her time of need will cause emotional upset and anxiety which could have been avoided if YBS had been transparent.
- YBS is preventing attorneys from acting in the donor's best interest.
- If YBS's software prevents a donor from operating an account themselves once a Power of Attorney is registered, poor bank and building society software

programming planning and foresight is a problem that lies firmly with YBS. Mrs M's type of LPA should be able to be pre-registered and to lie dormant on YBS's system until activation is potentially required.

- YBS's operation has opted for the easiest and most cost-effective operation for their business which causes donors to suffer and YBS should be held accountable for this.
- They would be interested to learn the statistics on how many other unsuspecting donors and attorneys have only learnt the restrictions of trying to pre-register a Power of Attorney when they come to do it.
- To describe this as "software limitations" is more than generous when these limitations are having a detrimental effect on elderly people's lives at a time when they are frail and vulnerable.
- Mrs M and S feel let down by both YBS and the Office of the Public Guardian because it has not been made transparent that registering an LPA in advance of need is an unachievable process.
- Mrs M and S disagree with my position that YBS did not miss a clear opportunity to tell them that they would not be able to register the LPA in advance of need. YBS should have told S when she went into branch to ask about the process, and also whilst at the appointment itself.
- S strongly contests what YBS has said about verifying Mrs M in branch and maintains that YBS has never gone through security verification with Mrs M, nor has it asked who S is. S explains that YBS did verify Mrs M during a recent branch visit, and this can only be as a direct result of this complaint. S feels YBS is trying to cover up past failings and it should apologise for this.
- Mrs M will lose out if she has to move her savings elsewhere. Moving to a new provider is not easy as Mrs M doesn't bank online, and she might have to accept a lower interest rate elsewhere to have a variable ISA that can be operated through a branch.
- None of the other financial institutions Mrs M banks with have prevented the pre-registration of the LPA.
- S would like to know why YBS started to ask for information about an attorney's salary. As an attorney, S explains she is a legal appointee and not a customer, so YBS should not be allowed to extract non-relevant and highly personal information from attorneys which has nothing to do with the attorney's role.

As the deadline for both parties to respond has now passed, I must go on to make my 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.

Having done so, I'm afraid my position will continue to disappoint Mrs M and S. I've thought carefully about everything that they've said in response to my provisional decision, but I still don't agree that YBS is treating them unfairly by saying it cannot register the PoA arrangement until Mrs M loses capacity.

S has explained that a bank or building society cannot prevent a legal representative from acting on behalf of a donor if the legal representative has authority to do so, such as a valid Power of Attorney. She says that as attorney, she has the legal authority to register the LPA with YBS to satisfy Mrs M's expressed wishes, even without activation.

Although I accept the LPA has been registered with the Office of the Public Guardian, the LPA documentation is clear that it can only be used should Mrs M lose mental capacity.

I appreciate S's position that they are not looking to actively use the powers under the LPA and instead only want to put it on file with the financial businesses Mrs M holds accounts with in case it should be needed at a later date. But YBS is not compelled to recognise S's authority to potentially act under the LPA ahead of time.

In my provisional decision, I explained that registering a Power of Attorney ahead of time can lead to some unintended consequences and complications. Even if Mrs M and S could do what they are seeking to do, in my experience, this can often create additional difficulties because some firm's systems are not well configured to have the donor still active whilst an attorney is also in place. S has inferred from this that YBS's systems are not configured to allow her to lie dormant in the background and YBS should be held accountable for this lack of investment. To be clear, I've not found that it is specifically a YBS software problem that is preventing the pre-emptive registration that Mrs M and S would like. It's YBS's policy that it won't add an attorney to an account pre-emptively. I do not have the power to make rules for financial businesses. That's the role of the regulator, the Financial Conduct Authority.

In any case, each firm has different processes for registering a PoA. Although some of Mrs M's other financial businesses have accepted the PoA ahead of time, I'm unable to compel YBS to follow suit when the LPA is unable to be formally used until the donor loses capacity.

S has been clear that Mrs M currently has capacity, so she is not required to actively act for Mrs M at the moment. This means that it's not unfair of YBS to base its approach on the situation as things stand now, and not the position as it may be in the future. It remains the case that S and her fellow attorney only need to register the LPA with YBS if Mrs M loses capacity and is no longer able to manage her finances. As I explained in my provisional decision, it's not prudent for a free dispute resolution service to devote further investigation into why YBS is asking for salary information when it's possible that the registration processes and procedures could change in the future, and it's also possible that the LPA may never need to be used.

I've thought again about what S said about YBS missing clear opportunities to tell them it couldn't register the PoA until Mrs M loses capacity, both when S first enquired and at the branch appointment. S has explained that YBS should have asked her what type of LPA she wanted to register, so YBS failed to ask the right questions to understand their needs. But on balance, I still think it's more likely than not that YBS didn't have enough information to be able to provide this clarity at these key interactions. When S first went into branch to ask what she needed to do, this was an informal approach which resulted in an appointment being made. I don't think it would have been appropriate for a bank employee to pre-judge the situation without any paperwork formally being submitted. The right place to explore the support that Mrs M required would have been at the appointment. But on the day of the branch appointment, the application was not completed due to the issues Mrs M and S had with the information YBS asked. I don't think I can fairly say that YBS's staff missed an opportunity to tell Mrs M and S about its policy around when it would be able to register the LPA when the application did not proceed.

Mrs M and S's strength of feeling on this matter is evident. They want YBS to be held accountable for letting them down and placing them in a situation where Mrs M could suffer. I do understand that Mrs M and S wanted to register the PoA ahead of time to provide peace of mind and make things run smoother should they need to use the LPA at a future date. I recognise that Mrs M is worried for the future and the whole point of the LPA was to avoid Mrs M being left in a difficult position. But whilst Mrs M has capacity, she can still operate her accounts as she wishes. For the reasons I've explained both here and in my provisional decision included above, I still do not consider there's anything further to be done at this moment in time.

**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 Mrs M to accept or reject my decision before 18 June 2025.

Claire Marsh  
**Ombudsman**