

### **The complaint**

The estate of Ms L complains Nationwide Building Society (“Nationwide”) refuses to refund it for unauthorised transactions on its account.

This complaint has been brought by the executor of the late Ms L’s will, who I will refer to as “T” in my decision. The complaint is about funds withdrawn from the account by Ms L’s Power of Attorney, who I will refer to as “P”. And in the hope that both parties don’t mind, I will also refer to the late Ms L as “Ms L”, for ease.

### **What happened**

The facts of this complaint are well known to both parties, so I won’t repeat them in detail here.

In short, T says P had a Power of Attorney (POA) for Ms L and she used this to spend on Ms L’s account without her knowledge and consent. She says the P made hundreds of ATM withdrawals and card payments on the account between December 2022 to August 2024 which were not for the benefit of Ms L and were unauthorised. So, she would like Nationwide to refund the disputed payments to the estate.

Nationwide says the transactions made from December 2022 to October 2023 were made using Ms L’s card and PIN, and Ms L never told it that these details had been compromised prior to her passing. It says Ms L hadn’t raised any concerns about the account activity prior to the POA being registered with it and it was not notified of any concerns with Ms L’s ability to manage her account prior to the POA being registered. Then a POA was registered on Ms L’s account on 31 October 2023. At this point it was recorded that Ms L could no longer manage her account and a new card was issued to P to manage Ms L’s finances. Nationwide says there were no other conditions in place as there had been no other conditions or requirements listed on the POA. Nationwide has explained that the transactions were not flagged as suspicious and there was no indication of fraud on her account. So, it hasn’t refunded any of the funds.

Our investigator considered this complaint and initially felt it should be partly upheld, however, after further investigation and discussion with senior investigators, concluded that Nationwide hadn’t done anything wrong. T wasn’t happy with this outcome, so the complaint has been passed 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.

Generally speaking, Nationwide is required to refund any unauthorised payments made from Ms L’s account. Those rules are set out in the Payment Service Regulations 2017. T says she doesn’t think Ms L carried out the transactions in dispute, nor does she think Ms L gave her P permission to make them – so these transactions are unauthorised. Nationwide says Ms L gave P consent to use her account, so it hasn’t done anything wrong in allowing this.

I've thought about what both parties have said alongside all the evidence included to come to a decision on whether I think the transactions should be considered as authorised or not.

The laws and rules regarding authorised transactions are clear. For a transaction to be considered as authorised it must be shown that they have been authenticated correctly and consented to. And if these two requirements are demonstrated, then a transaction should be classified as authorised and the account holder ought to be held liable for them.

The transactions in dispute were all completed using debit cards registered on the account, either as contactless payments or card transactions using the correct PIN. Having reviewed the list of transactions I've seen they were either made using Ms L's card or the card issued to P as her POA. So, this satisfies me that the transactions were authenticated.

The main issue in dispute here is whether Ms L consented to the payments in dispute, or whether they were done without Ms L's consent. The POA was registered on the account in October 2023. However, the transactions in dispute began in December 2022, at a time when only Mr L was a registered user of her account. However, the transactions were a mix of ATM withdrawals and card payments. This means whoever completed the payments had the genuine card and correct PIN in order to do so. T argues that these were not carried out by Ms L, as they were out of character for her usual activity and she had no need to spend as much money as was debited from the account. So, T says these were done fraudulently by P.

Ms L sadly isn't around anymore to ask, but it seems likely P was someone she trusted, which is why she later gave her the power to manage her finances. I understand Ms L wasn't in the best health at the time and had limited mobility to get around without help. So, it's likely she had to ask people for help. Ms L hadn't complained that her card was taken without her consent at the time, and there are 10,000 possible combinations of a four-digit PIN, so it's most likely anyone would correctly guess a PIN. So, I think it's likely Ms L had given her card to someone else (most likely P) and her PIN. And the act of doing so gives that person "apparent authority" to use the account without any restrictions. In which case, I can't say that the transactions made using Ms L's card were unauthorised.

Later, after 31 October 2023, the POA was registered on the account. From this point Nationwide had consent from Ms L to allow P to manage her account. This means accessing all the accounts the POA was registered on and providing P with a card to complete banking activities like making payments and withdrawing cash.

T argues that Nationwide didn't carry out any checks on whether Ms L was lacking mental capacity – which is the basis of the POA coming into force. T has provided a medical report from November 2023 regarding Ms L's mental capacity. But there is no evidence that Nationwide was supplied this at the time, so it wouldn't be fair for me to say it should've acted any differently with this knowledge. In any event, the report supplied speaks to her mental capacity in relation to her ability to stay at home and not in relation to managing her finances. So, I can't say for sure that this would've made a difference even if Nationwide had this at the time.

As a bank there is no legal requirement on Nationwide to conduct its own medical investigation as to whether a customer has mental capacity to manage their finances. When a POA is created and registered with it, it has a duty to enact it as instructed. By Ms L creating this POA suggests she trusts the person named on it and gives them consent to act on her behalf. Nationwide has provided evidence that it sent a letter confirming the registration of the POA to Ms L's home address outlining what this means. There is no evidence Ms L got in touch to say this isn't what she wanted. So, I don't think I can say Nationwide has done anything wrong in accepting and enacting the POA from the date it

was registered on the account.

T argues that P used the funds from Ms L's account for her personal enjoyment and it wasn't used for Ms L's benefit. While I agree these funds should've been used for Ms L's benefit only, this is a legal matter which T can take to the courts, but there is no evidence that Nationwide has done anything wrong here.

I know this outcome will come as a disappointment to T, but for the reasons outlined above I am not upholding this complaint.

### **My final decision**

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms L to accept or reject my decision before 26 December 2025.

Sienna Mahboobani  
**Ombudsman**