

## **complaint**

Mrs G, executor of the late Mrs K complains that Nationwide Building Society prevented her registration of a joint power of attorney and refused to allow her to register as executor of her late mother's estate. She says that Nationwide's actions prevented her from discovering misappropriation of assets until after her mother's death and delayed her discovery of wrongdoing by others.

## **background**

Mrs G has provided a very detailed background to the complaint which I refer to in summary only here.

In 2002, Mrs K granted a power of attorney to three relatives, one of whom was Mrs G. The power of attorney was registered with the Court of Protection in 2007. One of the other attorneys registered the power of attorney with Nationwide and conducted Mrs K's financial affairs for several years.

Mrs G says that in May 2011, she attempted to register the power of attorney with Nationwide so that she could join in the management of her mother's affairs. She says she was told by Nationwide that was not possible as only one attorney could be registered. Mrs G pursued the matter with Nationwide and completed a form to register as attorney jointly with the attorney who was already registered. There was some delay in the registration but Mrs G was registered as attorney in September 2011. Mrs G says she was not told about the progress or completion of her registration as attorney.

Mrs K died in September 2011. In October 2011, Mrs G attempted to register with Nationwide as executor of the late Mrs K but was told that Nationwide's policy was to register only one executor and, as it had already registered the other executor, it was unable to accept Mrs G's registration.

Subsequently, Mrs G says that she discovered that a substantial amount of money had been misappropriated from Mrs K by a third party. The other executor renounced probate and Mrs G is the sole executor of Mrs K's estate.

In essence, Mrs G says that Nationwide was at fault in denying her registration as attorney and executor. She says that if she had received the information she requested it would not have been possible for the misappropriation of Mrs K's money to continue. Mrs G says that early detection would have permitted an immediate investigation by the Court of Protection and others during Mrs K's lifetime. Mrs G has supplied a list of what she would like this service to demand from Nationwide.

The first adjudicator said, in summary:

- Nationwide delayed dealing with the application to register the power of attorney in August 2011.
- It incorrectly informed Mrs G that only one executor could be registered.
- Nationwide initially failed to provide a full copy of the power of attorney registration form.
- Its offer of £200 was fair and reasonable.
- Nationwide's actions did not contribute to misappropriation of money.
- Mrs G's requests for information were best suited to the courts.

Mrs G did not accept the adjudicator's view and responded at some length. In summary, she said:

- She has been advised that the courts are not suitable for her case.
- Nationwide has been guilty of misconduct in relation to banking instructions.
- Nationwide knowingly contributed to the delay in her discovering the misappropriation of money from Mrs K.
- She wants to know the nature and extent of Nationwide's misconduct, whether the misconduct involved any breach of standards or banking protocols or dishonesty on its part.
- There are independent witnesses who support her contention that Nationwide refused to register her as an attorney in May 2011.
- In August 2011, Nationwide should have told Mrs G that some of Mrs K's accounts could not be operated by an attorney and frozen those accounts.
- Nationwide staff collaborated with the registered attorney in order to mislead Mrs G.
- Nationwide accepted banking instructions that were invalid.
- Nationwide's policy is that up to four executors can be registered with it.
- It permitted money to be withdrawn after it was notified of Mrs K's death.
- Nationwide should have been alerted to suspicious account activity.
- The reason for Nationwide's offer of £200 has changed.
- The complaint should be re-investigated and staff members should at least be reprimanded.

A second adjudicator issued a further view in which he said that it was not clear whether Mrs K's estate had suffered loss as there was an offer to repay money. Mrs G did not accept the second adjudicator's view and asked that an ombudsman consider the matter. She reiterated parts of previous correspondence and also said, in summary:

- A substantial amount of money was misappropriated and whether some or all of it has been repaid is irrelevant. The central issue is what allowed the movement of money.
- Nationwide should have detected the misappropriation.
- Nationwide has avoided answering her questions.
- The estate has incurred a financial loss in terms of loss of interest on the misappropriated money.
- Her personal distress and inconvenience have been considerable.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

It is clear - and quite understandable - that Mrs G has very strong feelings about this matter. She has provided detailed submissions to support the complaint, which I have read and considered in their entirety. However, I trust that she will not take as a discourtesy the fact that my findings focus on what I consider to be the central issues as they relate to Nationwide's actions and that they are expressed in considerably less detail.

On balance, I find that in May 2011 Mrs G attempted to register as Mrs K's attorney and was told that it was not possible as only one attorney could be registered. That was not in fact the case. I prefer Mrs G's recollection of what was said, which I find consistent and cogent. Due, in part, to the passage of time, Nationwide does not have a persuasive response to this allegation. I am not assisted by Mrs G's reference to witnesses as the witnesses she describes could only speak about what Mrs G told them and were not first-hand witnesses of what was said.

In August 2011, Mrs G completed an application to register as an attorney jointly with the other attorney who was already registered. There was some delay in registration as the branch staff made errors in relation to certification of documents. Mrs G was registered as an attorney in September 2011. I accept that she was not informed by Nationwide of the successful registration. However, events overtook that as Mrs K died at the end of September 2011, which brought the power of attorney to an end.

I also find, on balance, that Mrs G was initially told that she could not register as an executor. That was also incorrect. Again, I prefer Mrs G's recollection of events for the same reasons as I have set out above.

I have seen nothing to indicate that Nationwide was at fault in relation to the misappropriation of Mrs K's money. The third party has confessed to transferring money out of Mrs K's accounts. Nationwide says that the transfers were carried out via online banking and that the other attorney should have been aware of any transactions. It also says that information is limited due to the passage of time since the withdrawals.

I do not require Mrs G or Nationwide to provide further evidence or information about how it handled the withdrawals for the fair resolution of this complaint. Even if I found Nationwide at fault in relation to the withdrawals, I consider that, in the particular circumstances of this case, a claim for any loss to Mrs K's estate is against the third party who allegedly misappropriated Mrs K's money and possibly anyone who assisted that third party, not Nationwide. It is also possible that any loss to the estate may be recouped by varying the beneficial entitlement under Mrs K's will. These matters are best dealt with in court proceedings where parties could be compelled to give evidence and be cross examined.

Where a business is at fault, losses are generally recoverable where they occurred as a direct result of the business' error and were a reasonably foreseeable consequence of that error. I do not consider that any losses suffered by Mrs K's estate were a direct result of Nationwide's errors in providing Mrs G with incorrect information or that they were a reasonably foreseeable consequence of the incorrect information given to Mrs G.

This service is an informal dispute resolution service and has no regulatory or disciplinary role in relation to Nationwide. We do not gather information for consumers or answer every question raised by them. I note that Mrs G has very many questions and requirements of Nationwide but it is not this service's role to respond to every point where doing so would not alter the outcome of the complaint.

I do appreciate that this matter has been extremely upsetting for Mrs G personally. But I can only consider the impact on the estate, rather than Mrs G's personal inconvenience and upset. I have noted the nature of the errors I have found and the extent of the contribution of those errors to the distress and inconvenience caused by third parties in this case. In all the

circumstances, I find that Nationwide's offer of £200 is fair and reasonable although I appreciate that this is not the outcome Mrs G was hoping for.

I note Mrs G's preference to avoid legal proceedings. However, in any legal proceedings the third party and others could be compelled to give evidence and questioned under oath in order to establish what loss, if any, Mrs K's estate has suffered. Mrs G may wish to take further advice in relation to that matter.

**my final decision**

My final decision is that Nationwide Building Society should pay Mrs G, executor of the late Mrs K, £200.

Louise Povey  
**ombudsman**