

## **complaint**

Mrs N complains that Bank of Scotland trading as Halifax ("Halifax") allowed withdrawals from a savings account she held jointly with her late father-in-law without her authorisation, when both their signatures should have been required.

Mrs N's solicitor brings the complaint on her behalf.

## **background**

Mrs N's father-in-law, Mr N, was suffering from an illness which meant that he was having difficulty managing his finances. He asked Mrs N to open a joint account with him to help him cope with his money.

Mrs N and Mr N opened a joint savings account with Halifax, with much of the opening balance being transferred from an account of Mr N's. A monthly pension payment for Mr N was also credited to the account.

A few months later, Mr N decided to appoint his solicitor as his attorney, giving him an enduring power of attorney which was later registered with the Court Of Protection. The solicitor said that Mr N had concerns about the actions of Mrs N in relation to his account and asked that it be frozen. Halifax then noted that the joint savings account was in dispute.

Under the power of attorney, the solicitor requested a number of withdrawals from the account. These were mostly to pay Mr N's living expenses, although a large cheque was drawn in favour of the solicitor's firm. These withdrawals were made with the signature of the solicitor as power of attorney alone, and without Mrs N's knowledge or co-signature. Mrs N had the passbook for the account so the entries in it were not updated to show these withdrawals.

Mrs N lost touch with her father-in-law; however she kept the account passbook. A number of years later, she went into her local branch with the passbook to update her address details. However, she found that the account had been closed. A new power of attorney had been registered on the account for Mr N a few years before and at some point Halifax's records for the account had been changed to show that only one signature was required for withdrawals. So although Mrs N was still named as joint account holder, the account had been closed on the request of Mr N's new attorney.

Mrs N consulted her solicitor who complained that the account should have been operated on the basis that there should be no withdrawals without the signatures of both Mrs N and Mr N. The solicitor said that Mrs N should be entitled receive back any money withdrawn without her consent.

Halifax said that the majority of the money in the savings account had been confirmed as coming from Mr N. It said that it seemed that Mr N did not want Mrs N to have control over his money. However, it assumed that Mr N and Mrs N had equal ownership of the money in the account. As the account was set up to need both signatures for withdrawals, it decided to make a payment to Mrs N which represented half of the money withdrawn from the account by Mr N's attorneys. It also paid Mrs N £100 for her inconvenience.

Mrs N's solicitor did not consider that this payment resolved the matter. The solicitor said that Mrs N should receive the full amount that was withdrawn.

Our adjudicator did not consider that the complaint should be upheld. She said Mrs N had become party to the account to help Mr N with his finances and Mrs N had told her that she would have consented to the withdrawals if Mr N or Halifax had asked her. She said that there was nothing to suggest that Mrs N was entitled to a certain amount of the money in the account, and therefore she had not suffered a financial loss.

The adjudicator understood that Mr N had passed away some time between the second attorney being registered on the account, and it being closed. She therefore said that Mrs N would have been entitled to the full balance of the account when it was closed. However, as Halifax had already paid Mrs N significantly more than this amount, she said that it did not need to do anything further.

On behalf of Mrs N, her solicitor disagreed and said, in summary, that Halifax was liable for all of the money withdrawn from the account without her authorisation and Mrs N would not have allowed money to have been used by other members of Mr N's family. The solicitor said that Halifax owed a duty to the account holders severally and its actions in allowing the withdrawals breached the mandate. Therefore, Halifax should pay Mrs N damages equivalent to the total amount withdrawn.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

It is difficult to know what the intentions were here with how the money in this account was to be used. Mr N had reached a time when he needed help with his finances and maybe the setting up of a joint account with Mrs N could have achieved this.

It does seem that the majority of the money in the account had come from the resources of Mr N rather than Mrs N. The account was originally set up so that both their signatures were required to make any withdrawals and it is reasonable to conclude that this was to help safeguard how the money was spent.

Whatever the circumstances, Mr N felt the need to appoint his solicitor to make financial decisions on his behalf under the power of attorney. Most of the withdrawals made by the attorney at this time have been shown to have paid for Mr N's bills and living expenses. And Mrs N has said that she would have agreed to these withdrawals. The reason for the large withdrawal in a cheque to the solicitor's firm cannot be known, however, this does not mean that I am able to safely conclude that this too was not for the benefit of Mr N.

In accordance with the signatory mandate for both signatures to be required for a withdrawal, Halifax should not have released the money from the account on the signature of the attorney alone. But it seems as though Mrs N would have agreed to them if she had been asked. So it is difficult to see that Mrs N has suffered a loss as the result of Halifax's error.

However, like the adjudicator, I find that the account would have become solely Mrs N's when Mr N passed away. The second power of attorney was registered on the account in 2008, having been signed in 2007. No other withdrawals were made from the account until it was closed by the new attorney in 2010. Although we do not know Mr N's exact date of death, I agree that it is reasonable to assume that it was at some point between the

registration of the new attorney, and the accounts closure. Mr N's pension credits to the account had also stopped in 2008.

Following its investigation into her complaint, Halifax considered that Mrs N should be entitled to half of the total amount that was withdrawn from it, as she had equal joint ownership of the money. It paid this amount to Mrs N as well as £100 for her inconvenience.

This amount is significantly more than what remained in the account at the time it was closed, and at the likely time of Mr N's death. In all the circumstances, I am unable fairly to conclude that Halifax should compensate Mrs N for the full amount of the withdrawals. I therefore do not require it to do anything further in order to resolve this complaint.

**my final decision**

My decision is that I do not uphold this complaint.

Cathy Bovan  
**ombudsman**