

complaint

Ms O complains, via a representative (H), about Santander UK Plc ("Santander refusing to register an enduring Power of Attorney on her account without additional information. Ms O wants Santander to register her attorney without the additional information.

background

Ms O is a longstanding customer of Santander and holds an ISA account with the business.

In 2004, Ms O completed an Enduring Power of Attorney nominating 4 attorneys jointly and severally. These included H.

The Power of Attorney specified that the nominated attorneys would have no power to act until

"they have reason to believe that

- (a) I am becoming mentally incapable of managing my own affairs or
- (b) That I have become physically handicapped to such a degree that I cannot look after my affairs without significant inconvenience discomfort or difficulty".

The Power of Attorney further specifies that if the attorneys have reason to believe that the person (Ms O) is becoming mentally incapable of managing her affairs, the attorney will have to apply to the Court of Protection for registration of the power. Understanding of this requirement was confirmed by all attorneys.

In September 2018, H completed an application to become Ms O's attorney for her Santander account.

With this application she provided a certified copy of the Power of Attorney, and H's ID documents.

Santander wrote to H in October 2018. It set out that the application was missing a copy of the Power of Attorney stamped by the Office of The Public Guardian.

H wrote back to Santander, enclosing a further copy of the unregistered Power of Attorney.

Santander responded to H, explaining that because of the conditions on the Power of Attorney, it needed evidence that either the Power of Attorney had been registered, or evidence that Ms O was becoming, or had become, physically incapable to the extent required by the Power of Attorney conditions.

H was not happy with this as she believed that the additional evidence was not required. She submitted a complaint.

Santander sent its final response in November 2018. Santander rejected the complaint and reiterated that because H was relying on Ms O being physically incapable, medical evidence would be required before she could be registered as an attorney.

H was not happy with this and contacted us.

One of our adjudicators has looked into this matter and set out his view to the parties. This was that Santander had provided evidence that they had acted in line with their processes,

and that because an assessment of Ms O's physical capabilities was required by the Power of Attorney, it was reasonable of Santander to require evidence of Ms O's physical health. He did, however, think that Santander should have offered an alternative to requiring Ms O to attend a doctor, as this could be difficult for Ms O to achieve.

Santander then agreed that it would be content to speak to Ms O over the telephone, confirm security with her and confirm her wishes, so as not to require her to attend a doctor.

H did not accept this view and asked for an ombudsman decision. H considered that the only assessment required of Ms O's health was that she, as the attorney, have reason to believe that Ms O was in failing health.

my findings

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

Firstly, I very much understand the frustration of both H and Ms O in relation to this matter. H has explained that Ms O retains mental capacity, and that the difficulties in her managing her own affairs are limited to her physical ability. This must be frustrating for both Ms O and H and it may seem as though additional requirements are an extra hurdle to clear at an already difficult time.

I do, however, have to consider whether Santander has acted wrongly, towards Ms O. Santander has responsibilities to protect its customers as well as to not place unnecessary barriers in the way of customers' wishes.

In this case, Santander has reviewed the Power of Attorney and considers that in order to safeguard Ms O's account it is appropriate to require some objective evidence to support H's belief. Due to the way that the Power of Attorney is drafted I think this is a reasonable stance.

I do, however, agree with the adjudicator's view that Santander ought to have been clearer in its communications with H, to explain why it needed additional information, and that it ought to offer some compromise when it became clear that attending a doctor would cause Ms O disproportionate inconvenience.

I think that the proposal subsequently put forward by Santander, that it telephone Ms O and obtain her verbal confirmation of her wish to register H as her attorney, is a sensible proposal in light of the evidence that Ms O retains mental capacity. The proposal allows Santander to balance its obligations to Ms O whilst not placing an unduly heavy burden on Ms O.

I have not seen any reason why this approach is not acceptable to Ms O, or that it would be impracticable. I think it a sensible solution.

I appreciate H's comments that it is an unnecessary step based on the comments of Ms O's solicitors, but I think in the context of the dispute it is a reasonable solution being offered.

As a result, I agree with the adjudicator's assessment and uphold Ms O's complaint, but think that a reasonable offer has been made to resolve the complaint.

I realise that this view will be disappointing to H and Ms O, but I hope it explains why I have reached it.

For these reasons, I do not ask Santander UK Plc to do anything further.

my final decision

For the reasons set out above, I uphold Ms O's complaint but think that Santander has made a reasonable offer to resolve the complaint. I do not ask Santander UK Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 8 February 2020.

Laura Garvin-Smith
ombudsman