

complaint

The estate of Mrs G complain about the way Bank of Scotland plc ("BOS") dealt with the late Mrs G and her accounts when she wasn't able to verify her identity in a phone call about her online bank account.

background

The substantive events which form the basis of this complaint occurred in January and February 2017. Sadly Mrs G passed away on 29 July 2017. Her executors, Mr and Mrs A, who are closely related to the late Mrs G, obtained a grant of probate on 25 August 2017. They now pursue this complaint on behalf of the estate. During her life Mrs G was assisted in dealing with financial matters by Mr and Mrs A. And more recently, on 17 May 2017, a Lasting Power of Attorney ("LPA") appointing Mrs A as attorney was lodged with the bank.

Mrs G had difficulty setting up a standing order online for her bank account. In the presence of Mr A – who also spoke with the advisor during the call - she phoned BOS but was unable to pass security. She was advised to call into the branch to verify her identity with photographic proof of identity. Mr A informed the bank she was unable to do so as she was registered disabled and 93 years old. The advisor told Mr A a home visit could be arranged via the local branch. That was declined. Mr A confirmed he would attend the branch but would be doing so to close the account.

On 1 February 2017 Mr A went into the branch, he says the bank refused to accept Mrs G's independently witnessed written instruction to close the account. He told us although the branch was happy with the letter and the proof of identity; it wasn't acceptable for the fraud department. He also said the bank insisted on a LPA to remove the security block on the account. He was also unhappy that the bank refused to acknowledge the first complaint. And he later complained separately, in his own right about the bank's treatment of Mrs G and the possibility that a fraud marker had been recorded against him personally.

The bank didn't uphold the first complaint. They said when security questions were answered incorrectly it was their procedure to refer the customer to branch with identification documents and when it wasn't possible a home visit was suggested. And Mrs G's independently witnessed letter to close the account couldn't be accepted as her identity remained unverified at that time. They also said the complaint brought by Mr A couldn't be logged without Mrs G's authority which they didn't have. And to enable Mr A to facilitate the account a LPA would be required.

Mrs G complained to us. She said she'd been harassed by BOS who'd refused to take account of her known hearing impairment and age and this had a significant and detrimental impact on her health. She said BOS had failed to accept her independently witnessed instruction to close the account and to correspond with her or accept Mr A's complaint. And finally that BOS insisted only a LPA would be accepted to remove the block on the account. Mrs G asked for BOS to demonstrate to this service and the regulator that they had in place better management controls of the fraud department to ensure such cases of disregard for the law cannot recur. And she asked for compensation.

Our adjudicator didn't uphold this complaint. He didn't think the bank had made an error by making security checks. He found BOS offered alternative arrangements when it was told Mrs G was unable to attend a branch but these were declined. And he didn't think the bank had insisted on a LPA or made an error in suggesting the LPA as a last measure.

The executors didn't agree. They provided a detailed response to the adjudicator's view and told us of their two main points of contention. Firstly they felt that the bank failed to make appropriate adjustments for Mrs G's known impaired hearing and age as they were obliged to do under The Equality Act 2010 before questioning her on 28 January 2017. And this constituted harassment and discrimination. Secondly that BOS had specifically stated a requirement for a LPA opposed to any other form of attorney. And that insistence incurred court fees and delay during the registration process. So the case has come to me for a decision. This decision relates to the first complaint brought by the executors. I've not looked at the separate complaint raised by Mr A in his own right, save for the element which relates to the service which Mrs G received.

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'm very sorry to learn of Mrs G's passing and would like to offer my condolences to Mr and Mrs A. I appreciate recent months will have been difficult for them. And I understand they feel our adjudicator's findings, premise and conclusions about their complaint are fundamentally flawed. But I've looked at everything afresh before reaching an independent view.

Firstly I should make it clear that the role of the Financial Ombudsman Service is to resolve individual complaints and to award redress where appropriate. I do not perform the role of the industry regulator and I do not have the power to make rules for financial businesses or to punish them.

Mr and Mrs A have raised several points in their submissions to this service. I've understood and looked into all of those but I've only commented on what I think's vital in my conclusions. And I think they've correctly identified the two main issues in their first response to the adjudicator's view.

the alleged failure to make appropriate adjustments for Mrs G's hearing impairment and age

I want to start off here by explaining we can't make technical findings on whether a business has breached The Equality Act 2010. But we can decide if a customer has been treated fairly. So, my decision has focused on whether Mrs G's attempt to access her account was considered fairly and the level of service provided during that process.

The Equality Act 2010 requires a business to take steps to remove barriers people face as a result of a disability so that, as far as possible, they receive the same service as someone who doesn't have a disability. I've listened to the call made by Mrs G on 28 January 2017. It's clear she was unable to answer the security questions. It's also clear Mr A alerts both call operatives to Mrs G's hearing impairment at the start of each conversation. Mr A told us on 23 June 2017 that call was the *first time* the bank were made aware of the hearing impairment. So I don't consider it reasonable for BOS to have made adjustments for this *before* verifying her identity in this call.

Once they were aware of the issues, during the call, BOS suggested the alternative of a home visit, which was declined. And later on 1 February 2017, in branch, when a home visit was requested for that same day (although I can see it was never intended that such a visit would be accepted) BOS suggested a *further* alternative of a LPA as a way forward. So, overall, I think BOS's response and suggestion of an alternative was reasonable.

It's for a bank to set their policy on security and something which this service won't generally interfere with. Banks have to identify their customers and ultimately such procedures and checks are in place to protect the customer. So I'm satisfied the bank did nothing wrong in asking the questions or in refusing to accept the written instruction presented by Mr A in branch on 1 February 2017.

the requirement for a LPA

Mrs G's telephone banking was conducted in the presence of a third party. Situations like these place both parties in a difficult position. It's understandable that Mrs G – who I don't doubt was assessed both pre and post February 2017 as having "*excellent mental capacity for her age*" – simply wanted Mr and Mrs A to assist her with day to day affairs. And likewise that Mr and Mrs A were acting with the best of intentions to help her. But equally the bank has a responsibility to protect their customer. So I'd expect the bank to exercise caution and to remain vigilant in such a situation, whilst at the same time, not wanting to inconvenience the customer.

BOS have a number of ways to enable a third party to access an account, which are set out on their website. I can see the Third Party Mandate and Court of Protection were unsuitable for Mrs G's situation. I can't see a reference, before the reply to the adjudicator's view, to Mrs G considering a general power. But I can see from Mr A's notes of events on 1 February 2017 that Mrs G had previously agreed to a LPA. Mr A said on 29 Jan 2017, when attorneys and certifier were available, Mrs G found out that the LPA did not become effective for 8-10 weeks. So she decided not to sign it and waste the registration fee as she wanted to close the majority of her accounts and give the money to her grandchildren and great grandchildren while she was still alive. Those notes also refer to Mr A's belief that his efforts to assist Mrs G were under suspicion.

BOS say they asked for a LPA, as an alternative to a home visit, based on the information from Mrs G and her family as they understood that was what she was contemplating. And they believed this was correct and for the protection of the customer. Where a LPA's submitted to court by someone other than the donor themselves, they'll receive notification from the court of the proposed registration. I don't know who sent Mrs G's LPA for registration. But I can see how that process could be of value, in situations such as this, where a bank ought to be vigilant. So, although I can understand registration of the LPA was frustrating, particularly when Mrs G had already considered and dismissed it in January 2017, I can't say it was unreasonable in these circumstances.

I agree it's not for the bank to diagnose mental capacity or to insist on a power of attorney. But I don't think their alternative of a LPA amounts to either of those. Unlike a general power a LPA will continue if the donor loses mental capacity. But to grant *any* form of attorney the donor must have mental capacity. So, despite an apparent misunderstanding of Mr A's use of the term "*senile*", as BOS suggested the LPA, where the donor's capacity is necessary, it appears to me they didn't make any negative assumptions about Mrs G's capacity. And I can't see the offer of a home visit was ever withdrawn.

In respect of Mr A's separate complaint about the service Mrs G received there's little I can add to what the adjudicator's already said. I think BOS's payment of £50 compensation for the delay in logging the complaint is a reasonable response.

Given how strongly Mr and Mrs A feel about this they may want to pursue the matter further through other routes. But my decision brings to an end what we – in trying to resolve his dispute with BOS informally – can do for him. I'm sorry if this disappoints them.

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 the estate of Mrs G to accept or reject my decision before 5 January 2018.

Annabel O'Sullivan
ombudsman