

## **complaint**

Mrs G, who holds a registered lasting power of attorney (POA) for Mr G, complains about the policy of Marks & Spencer Financial Services Plc, trading as M & S Bank, to require sight of the whole of the POA.

## **background**

In May 2017 Mrs G visited a branch of M & S Bank to find out some details about her husband's account. She took with her notice that he had given her POA and that this had been registered by the Office of the Public Guardian (the OPG) as required by the Mental Capacity Act 2005. She also took identification for herself and her husband. She was told she couldn't be given the information about the account as she didn't have the entire POA document with her. Mrs G asked why this was necessary and was told that the bank needed to check the entire document, including the names in it.

Mrs G complained to the bank. She said that the notice of registration stamped by the OPG ought to be sufficient. She didn't think that the names of the independent professional or of the witnesses should be accessible to any other party. In response, the bank said that the information given in branch was correct. The bank required the original or certified copy of the POA and ID for her.

Mrs G wrote again to the bank, saying that the response didn't explain why the bank had the rule. She said that if one was able to produce the registration document issued by the OPG, along with ID and proof of residence, there was no need for the bank to duplicate the work of the OPG. She thought that one telephone call to check on a database giving names and the registration number should enable the LPA to be verified.

The bank replied, saying that its power of attorney policy is set by its Compliance Department. Its aim is to safeguard the security of its customer's finances. The bank said there were currently no plans to amend the policy.

Mrs G complained to us. Our adjudicator didn't think that it was unreasonable of the bank to want to see the entire POA before registering it on its system. She thought the bank needed to ensure that the person registering it was named in the official document. This is because doing so gives that person access to the bank account of the person granting the POA. She said we wouldn't expect a business to contact the OPG to verify this. She also said it wasn't our role to tell business to change their processes as we don't regulate banking activity.

Mrs G asked for a decision from an ombudsman. She said that surely it wasn't too much to expect a bank to explain/defend its rules. She didn't think the bank needed to replicate the work of the OPG.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm afraid I'll have to disappoint Mrs G, as I'm not going to uphold the complaint. I agree with our adjudicator that it isn't unreasonable of the bank to ask to see the whole of the POA. I set out my reasons below.

Mrs G says that there is no need for M&S Bank to see the whole POA. The notice of registration provided by the OPG should be sufficient. I can understand why Mrs G has

repeatedly said this, given both the bank and our adjudicator suggested that one of the reasons the bank needed to see the whole of the POA was to verify the identity of the person being given the power. But I think there are other reasons why the bank needs to see the whole of the POA. It's unfortunate that no one at the bank was able to inform Mrs G of these.

In summary, one of the reasons why the bank needs to see the whole POA is that it is possible to place conditions or restrictions on the use of the power within the document. This can't be seen from the notice of registration provided by the OPG, which is the document Mrs G thinks should be sufficient for the bank.

If we look at the Lasting power of attorney for property and financial affairs granted by Mr G, we can see that it is on a standard form prepared by the OPG. Section 5 of that form allows the person granting the POA (Mr G) to say when the attorney is allowed to make decisions. In his POA Mr G decided to give Mrs G the power to make decisions for him as soon as the POA is registered. But he also had the option to only allow Mrs G to use the POA to make decisions for him when he had lost mental capacity. I understand that Mrs G says that Mr G is very sadly no longer able to make decisions for himself, but if he had included that restriction on his POA, the bank could have required Mrs G to prove Mr G had lost capacity to act for himself before allowing her to use the POA.

Section 7 of the form allows the individual to give legally binding instructions to his attorney as to what the POA can be used for. This could include restrictions on what could be done with bank accounts, for example. And sometimes powers are only given in relation to property and not in relation to finances, so bank accounts wouldn't be covered by such a POA.

I hope these examples assist Mrs G to see why the bank does need to see the whole of the POA given to her by Mr G before allowing her to use it to access information about his account. The notice of registration of the POA given by the OPG doesn't contain this detail; it only contains the names of the donor, the attorney and the fact that it has been registered. So it's not sufficient because it doesn't set out whether the POA is subject to any restrictions or conditions.

It's unfortunate that neither the bank nor our adjudicator were able to provide Mrs G with reasons that satisfied her. I do agree with our adjudicator that we can't ask a bank to change its processes. That's the job of the regulator, the Financial Conduct Authority. In any event, since I do think that it was reasonable of the bank to ask for the whole of the POA, I won't be asking it to do anything further.

### **my final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 7 May 2018.

Helen Wheatley  
**ombudsman**