

The complaint

Mr and Mrs P complain that Nationwide Building Society did not register a Lasting Power of Attorney (LPOA).

Mr and Mrs P are represented by their son in bringing this complaint. But for ease of reading, I'll refer to any submission and comments he has made as being made by Mr and Mrs P themselves.

What happened

Mr and Mrs P have had a LPOA set up since 2015 and they believe this was registered with Nationwide at the time. As their health deteriorated, their son became more involved in their banking, but he encountered problems as the process wasn't smooth, so he started using the Nationwide application (app) to move money for them. Mr and Mrs P say that during a discussion on the phone between Nationwide and their son, Nationwide said there was no LPOA despite his son talking about their finances with them multiple times previously, and he was prevented from using the app. The LPOA needed to be re-registered which their son says this took him over 16 hours to do. Mr and Mrs P made a complaint to Nationwide.

Nationwide did not uphold Mr and Mrs P's complaint. They said there were no records of the LPOA being registered before October 2022, and there is no evidence to suggest a Nationwide error delayed or increased the time it took to complete the registration process. They said LPOA's can't view the accounts they hold the LPOA for in their app as these can only be viewed via internet banking. Nationwide said they were unable to locate a recorded conversation in which a call handler told Mr and Mrs P's son that he would be able to view their accounts in the app. Mr and Mrs P brought their complaint to our service.

Our adjudicator said Nationwide said there was an informal agreement that allowed Mr and Mrs P's son to discuss information on Mr P's account in 2021. While their son may have been able to transfer funds from Mr and Mrs P's accounts, this was due to him having login details for their accounts. She said attorneys can't use the Nationwide app, but their son may be able to use internet banking to manage their finances. Mr and Mrs P asked for an ombudsman to review their complaint.

What I've decided – and why

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 aware that I've only summarised Mr and Mrs P's complaint points. And I'm not going to respond to every single point made by them. No discourtesy is intended by this. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

I must make it clear that I'm only able to award compensation to the eligible complainants here. In this complaint this is only Mr and Mrs P and not their son. Our rules don't allow me to consider any distress and inconvenience awards to an attorney in carrying out their role as an attorney. These individuals are authorised in law to represent consumers, but we wouldn't award compensation for impact caused to them personally. Having an attorney can also shield the eligible complainants from detriment.

I'm aware Mr and Mrs P's son made a complaint to Nationwide regarding a complaint he made to the Information Commissioner's Office (ICO). Nationwide have offered Mr and Mrs P's son £250 compensation for the distress and inconvenience Mr and Mrs P's son has had. As mentioned in my previous paragraph, I'm unable to award Mr and Mrs P's son directly any compensation for distress and inconvenience. Nationwide have confirmed the DSAR was just in Mr and Mrs P's sons name only. No DSAR was requested in his parents name. This is also apparent from the information Mr and Mrs P's son sent us in February 2023 and the DSAR is just in his name. So he may wish to contact Nationwide if he wants to accept this compensation.

While the LPOA was set up in 2015, I've not seen any evidence that this was registered directly with Nationwide. They have managed to check an archive system for the current account in 2015 and they have confirmed that it isn't showing that a POA (or LPOA) had been registered. They have said that if there was an attorney registered then this would've shown under the name of the account holder. They have also located four archive accounts for Mrs P, and they also weren't showing the LPOA was registered on them. So I've not been able to evidence that the LPOA was registered in 2015.

So I asked Nationwide if they could send me the customer notes for Mr and Mrs P from 2015 to when the LPOA was registered so I could see if there is any indication of what Mr and Mrs P's son had been able to do on their account prior to the LPOA being registered in 2022. But unfortunately they do not hold customer notes going back to 1 January 2015. They have provided me with customer notes which for Mrs P goes back to 14 August 2018, and for Mr P which goes back to 24 December 2019.

I've reviewed these customer notes. Mrs P's notes show that she had set up a bill payment or standing order in the branch on the following dates: 21 May 2020, 22 July 2020 and 12 December 2020. She also transferred £7,000 in the branch to an internal account on 21 April 2021, she withdrew £2,000 cash on 18 June 2021, and she made a cheque withdrawal in branch for £12,000 on 14 August 2018 (the earliest customer note). But as Nationwide's records show with there being no LPOA being registered, then Mrs P would have needed to authenticate these transactions.

That's not to say that Mrs P's son was not in the branch with her, and he asked the branch staff to carry out the transactions with her agreement, but the notes show the transactions were authenticated via a token - this could be something like a Personal Identification Number (PIN). So I'm persuaded that Mrs P's son would not have been able to make these transactions without Mrs P being present as he would not have a token such as a PIN to authenticate the transactions. The customer notes do not evidence that Mrs P rang Nationwide prior to the events being complained about, so it appears that Mrs P predominantly dealt with the branch.

I've reviewed the customer notes for Mr P. These also show branch transactions on 24 December 2019 (the earliest note) and 25 June 2020. The notes show that effective from April 2021 for Mr and Mrs P's son to be able to access their account information. This third party authorisation does not show he can transact on their accounts, and I've not seen any information to suggest he was able to transact on his parents accounts by himself via a

phone call to Nationwide or in the branch by himself before the LPOA was registered in October 2022.

I've looked at the Nationwide POA procedures and this shows what an attorney can and can't do. One of these things that an attorney can't do is to use the Nationwide app. I'm persuaded part of the confusion here is that Mr and Mrs P's son appears to have been told the terms and conditions have changed and that is why he is unable to use the app. But the reality is Nationwide don't allow attorneys to use the app anyway. He also appears to have been given (at best) unclear information about whether he could use the app to view/transact on his parents accounts once the LPOA was registered. Nationwide could have been clearer from the outset that an attorney would be unable to view/transact on the accounts via the app.

It appears that Mr and Mrs P's son downloaded the app onto his phone as he has told a call handler on 5 October 2022 that the app is on his phone, and he wanted to link three accounts for Mrs P on there. He has told a call handler on another call in November 2022 that he believes the branch staff helped him download the app and they were aware of what he was doing. He says he has been able to move tens of thousands of pounds and now he is unable to use the app. But I'm unable to evidence exactly what Mr and Mrs P's son was told by branch staff.

Nationwide dispute that he would have been told to download the app and use his parents log in details to transact on their accounts. But they have said that branch staff could have shown him how the app could be used to assist his parents. While I can't entirely rule it out, on the balance of probabilities I do think it's unlikely that branch staff would have told Mr and Mrs P's son to download the app and log in using his parents details when a LPOA wasn't registered, and an attorney couldn't use the app to view or transact on the accounts. It's unlikely they would encourage Mr and Mrs P's son to use their log in details.

So I can't say that Nationwide acted unreasonably by preventing access to the app. This was because it had become apparent that Mr and Mrs P's son was using his parent's log in details to do so, and that the LPOA wasn't registered. But even if the LPOA had been registered, an attorney can't use the app in their role as an attorney. I must make it clear to Mr and Mrs P that it is not within this service's remit to tell a business how they should operate their LPOA procedures, such as what access to what channels they should allow attorneys to use. It would be the role of the regulator – the Financial Conduct Authority, who have the power to instruct Nationwide to make changes to their policies and procedures, if necessary.

As Nationwide told Mr and Mrs P's son that there was no LPOA registered, this meant he had to register the LPOA. Nationwide's website sets out that it can take between 10-15 working days to register an attorney. The LPOA registration form shows they will not be able to set up internet banking access unless the attorney can answer yes to all of the following questions. One of the questions asks the attorney to confirm he has an account with them in his own name that is eligible for internet bank access. So Mr and Mrs P's son will have needed to set up an account in his own name to access internet banking for his parents under the LPOA.

Mr and Mrs P's son has said that this took over 16 hours to complete as he needed to open a new account and he spent considerable time at a Nationwide branch, and he had to return to the branch. I can sympathise with him at how long this process took and I don't dispute that he's been inconvenienced and distressed directly by what happened here and the process that he had to follow.

But as I've already mentioned, I can only consider awards for compensation for Mr and Mrs P as part of this complaint. And I'm not persuaded that Nationwide directly caused Mr and Mrs P distress or inconvenience as a result of the time it took their son to set up the LPOA. They did not spend the 16 hours doing this, and they were not required to visit the branch or re-visit the branch for him to open an account, so I'm persuaded that their son had shielded them from the distress and inconvenience of what happened here. And I can't reasonably say Nationwide should pay Mr and Mrs P compensation for what happened here. So it follows I don't require Nationwide to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 18 December 2023.

Gregory Sloanes
Ombudsman