

The complaint

Mr L complains that AJ Bell Management Limited trading as AJ Bell Investcentre (AJ Bell) caused delays to his son lodging the Lasting Power of Attorney (LPA) on his Self-Invested Personal Pension (SIPP) plan. This delayed access to his pension funds which he urgently needed for his care needs.

Mr L is represented in his complaint. But I'll only refer to him in my decision.

What happened

Mr L has a SIPP with AJ Bell. I understand that he was diagnosed with a degenerative medical condition in 2020. And that, as it got worse, his care needs increased to a point where he needed to access the funds in his SIPP to pay for the care he needed.

Mr L had set up a financial LPA in late 2019. But it hadn't yet been lodged with AJ Bell. So on 12 December 2022, his son emailed a copy of the LPA to AJ Bell. He said he wanted to talk to it about Mr L's pension. And that as soon as AJ Bell had processed and lodged the LPA on its systems, he wanted to know how much of Mr L's tax-free allowance remained.

Mr L's son chased AJ Bell on 14 December 2022 to confirm receipt of the LPA. And asked for it to be processed and lodged quickly. He said that he needed to urgently find out how

much of his father's tax-free allowance remained. And that he wanted to set up flexi-drawdown due to his father's recently increased care costs.

AJ Bell acknowledged the email on 15 December 2022. And said it would need the attached Attorney and Deputy form to be completed. It said it would need the LPA document to be sent to it in the post. And that either the original document, or a certified copy could be provided. But that it would need to meet the specifications.

AJ Bell said that there were specific rules about certified copies of LPA documents, detailed in Section 3 of the Powers of Attorney Act 1971. It said these rules stated that a copy could only be certified as an original by either the donor, a solicitor or a notary public. And that it must be a wet certification. It also said that the person certifying it must include their full name. And that every single page of the document had to be signed, dated, and contain wording that said the document was a *"true and complete copy of the corresponding page of the original"*.

Mr L's son emailed AJ Bell with a certified copy of the LPA on 16 December 2022. He noted a couple of potential minor issues with the completion and provision of the form, but felt these wouldn't cause a problem. He said that he'd also sent the LPA by special delivery that day. He also included a copy of his father's diagnosis letter in his email in case it was required. He asked AJ Bell to confirm receipt by email. And to return the document by a secure mail service once it was satisfied as to its contents.

Mr L's son chased AJ Bell on 21 December 2022, as he'd been told it would take five working days to lodge the LPA. He acknowledged that AJ Bell had received the original LPA

that he'd sent to it. He wanted it to progress the set-up of the flexi-drawdown Mr L urgently needed so that he could access his funds to pay for his care costs.

AJ Bell replied on 22 December 2022. It said that when it had reviewed Mr L's application it had noted that it needed the attached CVI (Confirmation of Verification of Identity) form to be completed. This was because the second attorney listed on the LPA lived overseas. It also confirmed that the LPA had been reviewed and would be returned by special delivery.

AJ Bell sent a second email on 22 December 2022 shortly after the first. This said that it had noted that the full Power of Attorney certification hadn't been dated on each page by the solicitor. And that it needed this before it could proceed.

Mr L's son replied to AJ Bell the same day. He said he would check with the solicitor to see if they wanted to date each page of the certified copy of the LPA or send the original. He also asked if the CVI only needed to have the second attorney's details included.

Mr L's son contacted AJ Bell again on 28 December 2022 to tell it he'd asked the solicitor to complete the CVI form. And to say that he hadn't yet received the LPA that AJ Bell said it would send by special delivery. He asked it to confirm that was in fact the case. Mr L's son confirmed to AJ Bell on 29 December 2022 that the LPA had arrived.

I understand that Mr L's son and his other attorney had an online conversation with his solicitor about the outstanding paperwork on 30 December 2022. But that it couldn't be completed at this point as the solicitor's office had closed for Christmas until 3 January 2023.

AJ Bell replied to Mr L's son's questions about the CVI form on 3 January 2023. It said that as the account was an Investcentre account, the adviser named on the account would sign the confirmation. AJ Bell apologised for the delay in responding.

Mr L's son replied on the same day to tell AJ Bell he'd completed the CVI form and asked the solicitor to verify the other attorney. And that the solicitor would send either a newly certified copy of the LPA, or the original, to AJ Bell by special delivery either that day or the following day. He also said that he was waiting for AJ Bell's benefits team to send him the appropriate paperwork to complete so that his father's account could switch to a flexi-drawdown. He said he understood that no action could be taken until the verification was complete.

Later on 3 January 2023, Mr L's son emailed AJ Bell to confirm that the solicitor had sent it a newly certified copy of the LPA. He asked for it to be returned to him by special delivery.

AJ Bell confirmed to Mr L's son on 5 January 2023 that he was now detailed on the account as the attorney and nominated contact. And explained how he could log into his online account. It said that the LPA would be returned to him. It also sent him the flexi drawdown form which it said would need to be returned to its benefits team once completed.

So it could provide Mr L's son with the relevant form, AJ Bell also asked Mr L's son to confirm if the form was going to be signed by Mr L's registered financial adviser, or if it would be signed on a non-advised basis. Mr L's son confirmed that the form would be signed on a non-advised basis. He also asked some questions about how to complete it.

AJ Bell sent Mr L's son the non-advised form on 6 January 2023. And explained that he needed to provide his father's details within the form, but to sign it himself.

On 7 January 2023, Mr L's son emailed AJ Bell to tell it he was working overseas but would look at the form on or very soon after 11 January 2023.

On 9 January 2023, Mr L's solicitor wrote to Mr L's son to tell him that there was no need for a date to be added to the certification. He said that the certification was to simply confirm that the document was a true copy of the original, regardless of the date it was certified. He also said that Section 3 of the Powers of Attorney Act 1971 didn't require the certification to be dated.

Mr L's son replied to the solicitor on 10 January 2023. He said that the document he held had been sufficient for all Mr L's other financial providers. He said he would complain to AJ Bell and ask it to explain why it had added this unnecessary requirement, which he felt had caused unnecessary delay, and stress and inconvenience.

Mr L's son complained to AJ Bell on 31 January 2023. He felt the process to lodge Mr L's LPA had taken too long to complete. And that the main reason for the delay was AJ Bell's insistence that the certified copy of the LPA which he'd sent in by post wasn't valid because the certifying solicitor hadn't dated each signed and stamped page. He said there was no legal requirement under the Powers of Attorney Act 1971 for each page to be dated.

And felt that AJ Bell had misinterpreted the requirements.

Mr L's son said that because of the delay, his father had lost the opportunity to engage a carer with whom he felt comfortable. And that he'd instead had to temporarily appoint a relative stranger. This had been unsettling at best and traumatic at worst for someone with Mr L's condition. He wanted AJ Bell to change its practices regarding certifying LPAs, to

avoid other consumers suffering unnecessary delays.

AJ Bell replied to Mr L's son on 6 February 2023. It said that its technical team had confirmed that it considered a number of factors when setting these requirements, including the official guidance on Gov.uk, which it said stated that each page must be signed and dated. It also said that it used an online legal resource that produced practice notes for solicitors. And that the practice note on LPA certification had recommended that solicitors signed, printed their name, wrote the name and address of their firm and dated each page. It also said that many other financial services providers took the same approach as it did.

AJ Bell issued its final response to the complaint on 7 February 2023. It felt that the time taken to lodge the LPA hadn't been unreasonable. And fell within its service level standards. But it said it had made Mr L's son's concerns known to management to prompt a change in response time.

Mr L didn't agree with AJ Bell. So he brought his complaint to this service. He felt that AJ Bell had misinterpreted the law on what constitutes an acceptable certified copy of an LPA. And that this had led to a delay in setting up a flexible drawdown on his pension.

Mr L felt that the only relevant benchmark was the letter of the law. And that it was concerning that other organisations also appeared to be imposing unnecessary requirements for validating LPAs. He wanted AJ Bell and those other businesses to review and change their requirements for accepting certified copies of LPAs. He also felt AJ Bell should compensate him for the delays.

Our investigator didn't think that the complaint should be upheld. He noted that the LPA certification had taken ten working days to be lodged, which he felt was a reasonable timeframe. He also felt that AJ Bell had clearly explained its requirements. And that the requirements weren't unreasonable.

Mr L didn't agree with our investigator. He made the following points through his

representative:

- he didn't think that the legislation required a business to have each page of the document signed. He felt that there was no specific legislation that stated how a document should be certified
- he was motivated to try to ensure that AJ Bell and other financial service providers streamlined their processes for certifying an LPA, so that customers could receive the most efficient service possible. And as those customers would generally be elderly, infirm and vulnerable, he felt that this service should encourage them to do so.
- he had consulted his lawyer who'd told him that government guidance wasn't a definitive statement of the law. And that the law was clearly set out in Section 3 of the Powers of Attorney Act 1971.

The lawyer had also said that it was statute that governed the certification formalities required for a certified copy to be proof of the content of the original power of attorney and NOT guidance provided on a government website. He explained his understanding of the requirements for the certified copy to be proof of the original. He said statute required signatures on each page, where the document consisted of two or more pages. But that the Powers of Attorney Act 1971 didn't include a requirement that the certificates must be dated.

As such, the lawyer felt that the first certified copy of the LPA submitted to AJ Bell had wholly complied with section 3 of the Powers of Attorney Act 1971. And that AJ Bell's additional requirement that the certification had to be dated was incorrect in law and unnecessary. And had led to avoidable and unreasonable delay.

The lawyer felt that AJ Bell should be encouraged to revisit its requirements, focussing on the provisions of the law and their clients' best interests.

As agreement couldn't be reached, the complaint has come to me for a review.

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.

Having done so, I'm not going to uphold it for largely the same reasons as our investigator. I can see that Mr L's son feels very strongly about this complaint, so I know my decision will be disappointing. I'll explain the reasons for it.

I first considered if AJ Bell treated Mr L fairly, and if it followed the correct process for lodging his LPA. Within this, I also considered whether AJ Bell's requirements for the certification of the LPA were appropriate.

Powers of Attorney Act 1971, Gov.UK and other guidance

I'm not a lawyer. However, from what I can see, Mr L's lawyer has reasonably suggested that the Powers of Attorney Act 1971 doesn't include a requirement that the certificates must be dated. And if this requirement hadn't been added by AJ Bell, Mr L's LPA could've been lodged much sooner.

However, AJ Bell said that, when setting its own requirements, it considered the official guidance on Gov.uk, which it said stated that each page must be signed and dated.

I've looked at this guidance myself, and can see that it confirms what AJ Bell has said. It states:

"How to certify a copy

Write the following text on the bottom of every page of the copy:

"I certify this is a true and complete copy of the corresponding page of the original lasting power of attorney."

On the final page of the copy, you must also write:

"I certify this is a true and complete copy of the lasting power of attorney."

You need to sign and date every page".

I've also independently checked our investigator's research from the Law Society's website. And can confirm that it states:

"There are no specific rules that apply to the certification of documents..." and: "It's entirely up to you how you certify. So long as the printed copy is 'true' to the original – that is, an exact reproduction of the original – you can certify it as a true copy. In this instance, you may wish to say, for example, "I certify that this is a true copy of the scanned original," so that it's clear what it is a true copy of". It then refers a user to the Gov.UK website for further information.

Clearly, this doesn't state that each page of a certificate should be dated. But it does refer a reader to the Gov.UK website for further information. And, as I've noted earlier, that states that every page needs to be signed and dated.

I acknowledge that Mr L's lawyer felt that the first certified copy of the LPA sent to AJ Bell had fully met the requirements of section 3 of the Powers of Attorney Act 1971. And I understand why he felt that AJ Bell's additional requirement for the certification to be dated was incorrect in law and unnecessary. But this doesn't mean that AJ Bell has acted unreasonably, or done something wrong.

I say this because, while I appreciate that the law and guidance are different, I'm satisfied that the government guidance suggests that each page of a certificate should be dated, despite the law being silent on this. And, as there are no specific rules that apply to the certification of documents, I'm of the view that AJ Bell's requirements were reasonable.

I also acknowledge that Mr L's lawyer considers that the guidance on Gov.UK is wrong. And that AJ Bell should simply be following statutory requirements. But I can't reasonably tell a business that it can't follow the government guidance.

And, while I understand that Mr L's son and his lawyer have been motivated in this complaint to try to ensure that other vulnerable and elderly customers receive the most efficient service possible, this service doesn't have the power to ask AJ Bell to change its current process, as we're not the regulator.

However, I'm encouraged that AJ Bell has said that it has provided feedback to senior management. And that it may consider this when making any future changes to its LPA process. I also note that I understand that LPA's can be lodged with financial service providers as soon as they exist. So Mr L's LPA could've been lodged at any earlier point, when it wouldn't have been so important for there to have been an urgent, highly efficient,

certification process.

I also considered what AJ Bell told its customers they would need to do in order to lodge an LPA.

Did AJ Bell provide information on the process for lodging an LPA?

AJ Bell has provided a copy of its Attorney and deputy information form. This details what has to be done before an LPA can be lodged with it.

The completion notes state the following:

“Before we can accept instructions from you on behalf of the customer, we need to verify your identity. To do this, we need your name, address and date of birth so we can run verification checks. Our standard process is to conduct these checks at the outset when we are first notified of the Power of Attorney.

If there are two attorneys, we require details of both. If there are more than two attorneys, please complete a second form for the third and subsequent attorneys.

For a Power of Attorney or a Deputy Order, we require sight of the original document or a copy. Please note that legislation requires a copy of a Power of Attorney to be certified by a solicitor, a notary public or the customer themselves. The person certifying a Power of Attorney must include on every page: their full name, their signature, the certification date, and wording to confirm that each page of the document is a “true and complete copy of the corresponding page of the original”. Wet signatures are required on all certified copies of a Power of Attorney”.

I consider that this is a clear explanation of the process. And I’m satisfied that this was the process AJ Bell followed in this case.

Therefore, while I acknowledge that Mr L’s son considers that AJ Bell have misinterpreted the law on what constitutes an acceptable certified copy of an LPA, causing a delay, I don’t agree.

However, I do think that AJ Bell could’ve provided a better explanation of why it used the process it did. I say this because in its 7 February 2023 response to Mr L’s complaint, it referred to: *“the fact that the Power of Attorney had to be dated alongside the certification”*. While I consider this was a reasonable requirement under AJ Bell’s own process, as I detailed above, I’m of the view that this wording could be taken to mean that statute required each page to be dated. And this wasn’t the case.

I also consider that AJ Bell’s completion notes are slightly misleading. This is because they state: *“Please note that legislation requires a copy of a Power of Attorney to be certified by a solicitor, a notary public or the customer themselves. The person certifying a Power of Attorney must include on every page: their full name, their signature, the certification date...”*. I consider that this could be taken to mean that the legislation requires each page to be dated. But, as detailed earlier, this is not the case.

Despite this, I’m not of the view that this lack of clarity on the reason for the process being as it was caused any delay to Mr L’s LPA being certified. I say this because AJ Bell followed its usual process for certifying it. And that process wouldn’t have changed even if AJ Bell had more clearly explained why it had decided to require each page of the LPA to be dated.

I’m satisfied that AJ Bell fully explained its requirements. And that those requirements were

reasonable.

Overall, it took ten working days for the LPA to be lodged - from 19 December 2022, the first working day after receipt of the original certified LPA in the post, until 5 January 2023. I consider this is reasonable. Therefore I don't consider that AJ Bell caused any unnecessary delay to the process. So I can't reasonably uphold the complaint. And, while I understand why Mr L's son would like AJ Bell to change its requirements so that other people benefit from a more efficient process, I can't fairly require it to do so.

My final decision

For the reasons set out above, I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 August 2023.

Jo Occleshaw
Ombudsman