

The complaint

Mr W1 and Mr W2, on behalf of Mrs W, complain about the difficulties experienced registering a Power of Attorney ("POA") document, following the opening of a fixed rate bond with Nationwide Building Society.

What happened

In October 2022 Mr W1, Mrs W's son, opened a fixed rate bond account online with Nationwide, in Mrs W's name. As he was acting as an Attorney for Mrs W, once he'd opened the account, on 24 October 2022 he went into a Nationwide branch to deposit a cheque and to provide them with a copy of the POA, completed Nationwide POA forms and identity documents. He was told the POA team would need to review the documents and would be in touch within two weeks.

On 16 November 2022, the POA team wrote to Mr W1, asking for his brother, Mr W2, to also sign the form as the POA said that the attorneys must act jointly. Mr W1 disputed this, saying that Mrs W's intent was to allow them to act jointly and severally – and that other firms have allowed them to act independently of each other. He also provided them with access to the online version of the POA.

There was further correspondence between the parties, including Mr W1 writing to the CEO of Nationwide asking her to assist. On 6 December 2022 Mr W2 sent a signed form to Nationwide to speed the process along, though both he and Mr W1 maintained their disagreement with Nationwide's approach. On 22 December 2022 Nationwide confirmed that they had registered the POA, though they were waiting on guidance from the Office of the Public Guardian about how they should interpret the wording on both the paper copy of the POA and that available online.

On 10 January 2023 Nationwide wrote to Mr W1 asking for a new access code for the online POA. On 15 January 2023 Mr W2 wrote to Nationwide as he hadn't received any confirmation of receipt of his letter of 6 December 2022.

Mr W1 complained about Nationwide's handling of this, and Nationwide offered £100 compensation for the time it had taken them to initially review the documents. However, they maintained they hadn't done anything wrong in interpreting the POA documents. As he remained unhappy Mr W1 brought the complaint to our service and said he was unhappy that:

- Nationwide hadn't sent a written confirmation of the fixed rate bond, setting out the amount invested, expected maturity date or interest rate.
- Nationwide should have accepted the POA without the need for Mr W2 to be involved, as other firms have.
- He felt the CEO ought to have replied directly rather than passing his correspondence to the complaints team. He wanted a personal apology from the CEO regarding the situation.
- The 10 January 2022 letter contradicted what he'd previously been told.

- Neither he nor Mr W2 had received confirmation of whether Nationwide would accept instructions from just one of them – or whether both would be needed – when the bond matures.

An investigator at our service looked into the complaint and upheld it. She found:

- The service provided by Nationwide caused inconvenience to Mr W1 and Mr W2, on Mrs W's behalf, and she recommended that Nationwide pay £250 total compensation.
- Mr W1 and Mr W2 deserved clarity over whether Nationwide would require them to act jointly or jointly and severally and so she said Nationwide should clarify this in writing to Mr W1 and Mr W2.
- Nationwide should write to Mr W1 to set out the details of the bond, as he didn't have online access to that information.
- Nationwide didn't act unreasonably in interpreting the POA documents in the way they did, so she found it was fine for them to ask Mr W2 to be involved.
- That Mr W1 and Mr W2 could speak to the Office of the Public Guardian ("OPG") about having the POA clarified.
- She didn't think a reasonable remedy was to recommend that the CEO of Nationwide write an apology to Mr W1.

Nationwide agreed with the investigator's opinion. Mr W1 didn't agree, in summary because he felt both the investigator and Nationwide were wrong about the POA; that he feels the compensation isn't enough; he insists on a letter from the CEO of Nationwide; that the POA cannot now be altered, so it was wrong to suggest he approach the OPG. As the investigator wasn't persuaded to change her opinion, the complaint has been passed to me for a final decision.

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 agree with the investigator's conclusions for largely the same reasons. I've considered the complaint points separately below, for clarity. Mr W1 has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he and Mr W2 won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

Has Nationwide interpreted the POA in a fair and reasonable manner?

The lasting POA that Mrs W completed, originally appointed her husband as her sole attorney, in Section 2 of the POA document. In Section 4, Mrs W named Mr W1 and Mr W2 as replacement attorneys, who would step in when the sole attorney was no longer able to act, as happened here in 2021 when Mrs W's husband sadly passed away.

Section 3 of the form sets out how the original attorney could act. There were four options:

- Jointly and severally
- Jointly
- Jointly for some decisions, jointly and severally for other decisions
- Lastly, Mrs W could tick to indicate that she was only appointing one attorney

Mrs W marked the option of 'jointly and severally'. In Section 4, where Mrs W entered Mr W1 and Mr W2's details as replacement attorneys, the form explains that replacement attorneys would not act in the same way that the original attorney(s) could act. It states:

"If there's more than one replacement attorney, they will all step in at once. If they fully replace your original attorney(s) at once, they will usually act jointly. You can change some aspects of this, but most people don't... You should consider taking legal advice if you want to change when or how your replacement attorneys act."

There is then a box that can be ticked – which Mrs W left blank – that says

"I want to change when or how my attorneys can act (optional). Use Continuation sheet 2."

Mr W1 has argued that when read as a whole, the POA shows that in ticking 'jointly and severally' in section 3, Mrs W's intent was to allow her replacement attorneys to act jointly and severally.

Having reviewed this form in full, I don't think it was unreasonable for Nationwide to interpret the form differently to the way Mr W1 asked them to. I'm satisfied that when the form is read as a whole, it's clear that replacement attorneys do not automatically act in the same way as that chosen for the original attorneys.

I accept that logically Section 3 was completed incorrectly by Mrs W, as she was only appointing one attorney, and so she should have chosen the option to reflect that situation. She may have done this as a mistake, or because she thought it referred to the replacement attorneys (as Mr W1 has argued), or for some other reason. However, Nationwide can't be sure of her intent, especially in light of the clear information given in Section 4 about replacement attorneys.

Nationwide have a duty of care towards Mrs W and given the legal nature of this document, I don't think it was unreasonable for them to interpret the document as saying that Mr W1 and Mr W2 could only act jointly, and not severally. As a result, I don't think they were wrong to ask Mr W2 to also complete the paperwork.

I've also considered the online version of the POA. This says:

"How decisions are made: Decisions are made by one attorney"

The OPG has issued guidance on the gov.uk website about the online POA documents. It gives an example of a POA that is set up with two attorneys who can act jointly and severally and under the "How decisions are made" section it says:

"Attorneys can make decisions jointly (together) and severally (separately)"

There is another example showing a POA set up with one attorney only, and in the same section it says:

"Decisions are made by one attorney"

So, the online version of the POA doesn't say that Mr W1 and Mr W2 can act jointly and severally, because the wording displayed in the relevant section doesn't match that given in the examples from the OPG. I consider this further supports Nationwide's actions in this case.

Overall, I'm satisfied Nationwide acted fairly and reasonably in disagreeing with Mr W1's interpretation of the POA and in asking Mr W2 to be involved in the account.

The service Nationwide provided

Having reviewed the timeline of events, I agree the service Nationwide provided caused unnecessary inconvenience here in the following ways:

- They didn't meet their own timescales during their initial review of the POA documents – it took around a week longer than it should have.
- They didn't acknowledge receipt of Mr W2's documents or tell him that he'd been registered as an attorney on the account.
- They didn't send Mr W1 written confirmation of the account details, despite his requests for this.
- On 10 January 2023 they told Mr W1 that they needed further access to the LPA when this wasn't needed.

I've considered whether the way Nationwide has offered to put these service issues right is fair and reasonable.

I note that in her opinion letter, the investigator said that Nationwide should write to Mr W1 and Mr W2 to tell them the account details and to confirm whether they would both need to be involved upon the maturity of the account. The account has now matured, and the maturity value was paid out. So, I'm satisfied that these two letters no longer need to be sent.

Nationwide has agreed to pay £250 for the inconvenience they've caused and I think this is fair. I'm satisfied it reflects the above errors I've identified and the additional time, effort and confusion they've caused by not communicating clearly regarding the account.

Mr W1 has said that to resolve the complaint he'd like the CEO of Nationwide to write a personal apology. I can see that Nationwide did apologise when they responded to Mr W1's complaint. In agreeing to pay compensation they are admitting wrongdoing. I'm conscious that a CEO's responsibility is to oversee the entire company – and Nationwide has chosen to establish a team that specifically handles complaints, rather than the CEO answering them, which it is entitled to do. I'm glad to see that the complaint team has already apologised. For those reasons, I don't think it would be proportionate to direct that a specific person within Nationwide also apologises to Mr W1 and Mr W2.

I appreciate that this will come as a disappointment to Mr W1 as he feels strongly that Nationwide should do more to put things right. But for the reasons I've set out above, I think the offer they've made is fair and reasonable here.

My final decision

I uphold the complaint. Nationwide Building Society has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Nationwide Building Society should pay £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W1 and Mr W2, on Mrs W's behalf, to accept or reject my decision before 5 January 2024.

Katie Haywood
Ombudsman