



<u>Decision Ref:</u>	2019-0020
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Current Account
<u>Conduct(s) complained of:</u>	Failure to process instructions Delayed or inadequate communication
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

Background

This complaint concerns the Provider's administration of a joint account, held in the name of the First Named Complainant and his late mother. The Second Named Complainant is the sister of the First Named Complainant, and personal representative of their late mother's estate.

The Complainants' Case

The First Named Complainant held a joint account with his late mother. In March 2016 a hold was placed on the account as the Provider was put on notice that the other account holder may have been lacking capacity to manager her own affairs.

The Complainants say that their primary issue was the wellbeing of their very elderly mother, who was dying. They believe that the Provider was guilty of "*unjust treatment of her as an elderly citizen with dementia*", and they say indeed that the Provider unjustly treated both account holders. They have sought an apology for their mother, who is sadly now deceased, and they suggest that the First Complainant was denied normal access to the account, thereby causing the deceased unnecessary anxiety and stress in the final year of her life. Specifically, they say that the Provider ignored the First Complainant's rights as a

legitimate joint name on the “*either/or*” account, by wrongfully putting the account on “*hold*” against his wishes, thereby denying him normal access.

The complaint is that the Provider wrongly placed a hold or block on the joint account, in circumstances where the Complainants believe that the First Named Complainant, as authorised signatory on the mandate, should have been entitled to carry out normal transactions upon the account.

The Provider's Case

The Provider states that where it is on notice of mental incapacity of an account holder, it is under a duty to suspend the mandate until such time as the position is regularised. As the Provider had received notification from a medical practitioner that the Complainants’ mother was mentally incapacitated, the Provider suspended the mandate on all accounts held in the name of the Complainants’ mother (both solely and jointly). The Provider says that as this lady was no longer in a position to manage her own financial affairs, the mandate could no longer be relied upon. It points out nevertheless that it facilitated specific individual withdrawals from the account, in order to pay for the Complainants’ mother’s nursing home bills and pharmacy bills, upon receipt of invoices for these costs.

The Provider considers that its actions regarding the account were appropriate and necessary under the circumstances.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider’s response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 11 December 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the

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parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the consideration of an additional detailed submission from the Complainants, the final determination of this office is set out below.

The First Named Complainant held a joint account with the Provider. The account was opened on foot of a Current Account Opening Form dated 24th January 2014. The mandate provided that withdrawals could be effected by either one of the account holders (as opposed to both of them).

Funds were transferred into the account from another account held with the Provider. The "reason for opening" in the form was described as "retirement".

On the 16th of December 2002 the Complainant's late mother executed an Enduring Power of Attorney ("EPA") wherein she nominated the Complainants and a third party as Attorneys to manage her property and affairs, in the event of her becoming mentally incapable of doing so.

The events that form the background to this dispute occurred while the Complainants' mother was suffering from mental impairment, due to advancing dementia. Sadly, she passed away on the 20th of May 2017.

The Complainants have confirmed that

By letter dated 1st February 2016, a third party wrote to the Provider raising an issue in respect of the Complainants' mother's capacity to manage her own affairs.

On the 4th of March 2016 the Provider placed a "pay no withdrawal" hold on all accounts held by the Complainant's mother, including the one jointly held with the First Named Complainant. The First Named Complainant was advised of same by telephone that day.

Having discussed the matter with the First Named Complainant, the Provider agreed to facilitate payments to his mother's nursing home. The Provider issued correspondence to the Complainants' mother's solicitor confirming the position, and to the First Named Complainant advising that the mandate on the account had been suspended, pending confirmation from a medical practitioner of his mother's mental capacity.

In its letter to the First Named Complainant the Provider furnished the following information:

"[The Provider's] solicitor has outlined to [the Complainants' mother's solicitor] the requirements to assist in the removal of the hold from the account, that is confirmation from a medical practitioner of [the Complainants' mother's] capacity and confirmation from [the Complainants' mother's solicitor] that he has taken instructions... to confirm the mandate on the above joint account."

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“this is a legal issue and can only be resolved through the legal channels”

From then on, payments were made by way of bank draft from the joint account for nursing home and pharmacy fees for the Complainants’ mother only. Invoices and receipts were presented by the First Named Complainant for disbursements. No other payments were made out of the account. These payments had to be arranged by the First Named Complainant in branch, in person. Clearly, this was a great inconvenience for the First Named Complainant.

The Provider continued to receive correspondence in relation to the account from a third party. The Provider also received correspondence bearing the signature of the Complainants’ mother.

The Provider did not receive confirmation of the Complainants’ mother’s capacity, nor was the enduring power of Attorney registered prior to the Complainants’ mother’s passing. The Complainants point out that it was not within the gift of the First Complainant to achieve this. It seems indeed that matters remained at a standstill in that regard, owing to the stalemate amongst the 3 Attorneys. This placed the Provider in a difficult position, but payments for the Complainants’ mother’s medical expenses continued to be facilitated by the Provider, notwithstanding this impasse.

Analysis

The Complainants want the Provider to apologise for, as they see it, its wrongful placing of a block on the account. They maintain that the account mandate provided for one signature to authorise payments, and they fail to understand why the First Named Complainant could not therefore effect payments with his sole signature.

The Provider has prepared and submitted lengthy legal submissions on this issue, which I accept, correctly outline the position. In short, where the capacity of a signatory to a mandate is in issue, the appropriate course of action is for the mandate to be suspended in its entirety, until the position is clarified. Where, as in this instance, capacity was not found to be present, the mandate was no longer valid. The position must then be resolved by the Attorney or joint Attorneys (under the EPA) applying to Court to have the EPA registered. The EPA does not come into force until it has been registered. This did not happen in this instance, but not because of any wrongful conduct on the part of the Provider. Unfortunately, the Attorneys themselves could not reach agreement.

The Provider however, permitted payments to be made from the account in discharge of the lawful debts of the Complainants’ mother and/or “necessaries”.

I am satisfied that the Provider was placed in a difficult position due to a dispute between the Attorneys identified within the EPA. I am satisfied that the Provider however, acted in a completely appropriate fashion in accordance with its regulatory and legal obligations. Any other course of action, whether to allow the First Named Complainant to effect payments

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as normal, or to accept instructions from the Complainants' late mother, or a third party on her behalf under an unregistered EPA, would not have been appropriate.

It seems from the evidence that the reason the difficulties arose at all, in relation to this account, and indeed in relation to the resolution of those difficulties, is because of a dispute between the Complainants and a third party which it is not within the remit of either the Provider, or this office, to resolve.

In my opinion, the Provider was entirely justified in maintaining that confirmation of this lady's capacity, or a registered EPA was required in order to progress matters.

I do not accept that the Provider's actions give rise to any inferences about the character of anyone involved in this dispute. On the contrary, the Provider has remained entirely neutral and objective in both the actions it took, and in the tone of its correspondence, as is appropriate.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

25 January 2019

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
- and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

