DRN-4186421

The complaint

Mr F complains Lloyds Bank PLC ("Lloyds") acted on his instructions to remove him from a joint account held with his wife. He's assisted in bringing this complaint by his attorneys and their representatives.

What happened

On 4 March 2010 Mr F made a property and financial Lasting Power of Attorney ("LPA") appointing two attorneys on a joint and several basis. It was registered with the Office of the Public Guardian on 9 February 2016. On 20 December 2021 Lloyds recorded the LPA on Mr F's records noting he was allowed to retain access to the account with the attorneys.

On 10 January 2022 Mr F - along with the other account holder - attended branch and completed an application to remove him from their joint account. The attorneys, when requesting copy statements, a number of months later, became aware that this had taken place and were unhappy. They thought Lloyds had allowed Mr F to be removed from the joint account without undertaking due diligence to safeguard him.

Lloyds didn't uphold the attorney's complaint. It was satisfied it's processes and policies were completed correctly when the application was made. It told the attorneys, as the LPA registration with them allowed Mr F to retain control over his accounts, they would have no reason to restrict his transactions or decisions in relation to his banking. The attorneys didn't agree and brought the complaint to us.

Our investigator didn't think Lloyds had made a mistake. She's seen the signed application and that Lloyds had no records of Mr F's health to suggest his ability to make rational decisions was hindered. So, she didn't uphold the complaint.

Mr F's attorneys didn't agree. They made a number of points in response to the view. The central two points being firstly our investigator had failed to consider the question of Mr F's capacity and, secondly, the prospect of him being subjected to undue influence. They thought Lloyds hadn't given an adequate response to the complaint and our investigator hadn't fully understood the nature of and the attorneys cause for complaint.

After initially considering the case, I asked Lloyds for further information and they responded.

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.

Mr F's attorneys raise several points in submissions to this service, both before and after the investigator issued her view. I've understood and looked into all of those but I've only commented on what I think's vital in my decision. That's not meant as a discourtesy but rather it reflects the informal nature of this service. Where facts are unclear or in dispute, I've looked at the available evidence and come to a decision on what's most likely to have happened, based on a balance of probabilities.

The attorneys think Mr F was potentially vulnerable and Lloyds should've taken further steps to ensure his instructions were his own and that they were free of undue influence.

The FCA guidance on the fair treatment of vulnerable customers defines a vulnerable customer as "*someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care".* There's nothing before me which would suggest Lloyds have acted contrary to this guidance. I'll explain why I think that.

The attorneys say all we've seen is a note which was signed by a vulnerable individual who was, at the time, near blind and thoroughly dependant on his wife for care and support. I don't think that's entirely accurate. We have seen copies of the full application form signed, in branch, by both parties. After my request Lloyds sent further information they'd received from the branch with their recollections of the meeting. In addition to the signed application form it sent an extract of an email from branch stating *"I remember seeing Mr and Mrs F at our welcome desk at which time Mr F requested to be removed from the account. Both parties were present had mental capacity. Mr F explained this account was used for housekeeping that (his wife) dealt with so was happy to be removed. I remember asking him again was he absolutely sure he wanted to be removed, which he confirmed he was. At the time, although both elderly, they were not considered to be vulnerable, just a sweet elderly couple who we had known in branch for many years."*

Lloyds also said the branch staff had undertaken regular training on vulnerabilities and had instant access to the bank vulnerability tools and support information. So, it seems to me, not only was the banks procedure followed, but it carried out its own checks on Mr F to ensure that he was mentally capable of making the decision to close his account. And that Mr F was asked to confirm he wished to go ahead. So, based on what I've seen, I'm satisfied they carried out reasonable checks in this regard.

It's not for me to make a finding on whether or not Mr F had capacity, at the time, but rather whether Lloyds did anything wrong here. So, I've also looked at what Lloyds knew or ought reasonably to have known at the time they were given these instructions by Mr F. Lloyds would, of course, have been aware of Mr F's age from his records. And that the LPA was noted on their systems just three weeks before which allowed Mr F *to retain access to his account with* his attorneys.

Other than this I can't see Lloyds had any further information or medical evidence at that point. I haven't been sent any medical records with this complaint, so I've relied on what the attorneys have told me about of the state of Mr F's health. They say at the time of the removal from the joint account Lloyds would've been aware Mr F was significantly visually impaired and being taken to visit the branch multiple times during a week to check the balance. Their complaint form states Mr F had *"potential vulnerability when the LPA was registered with (Lloyds) in November/December 2021. Since that time, … (Mr F's) condition has deteriorated. He has vascular dementia and Alzheimer's disease, which affects his mental capacity"*. And before our investigator issued her view in April 2023 the attorneys told us *"(Mr F) is currently in a care home and has developed vascular dementia and Alzheimer's disease. However, at the outset of this matter (before he was diagnosed with dementia/Alzheimer's) he certainly had sufficient understanding of the situation to be most upset and concerned about the dealings with Lloyds and their consequence. His distressed reaction when he realised that he no longer had access to his funds suggested that Lloyds did not take sufficient care in protecting a vulnerable person (93 years old, frail, and near-blind)."*

In a letter to us after the investigator's view the attorneys have set out the definition of mental capacity from the Mental Capacity Act 2005 (MCA), so I won't repeat that here. In considering whether Lloyds have done anything wrong, I think, the matter turns on why the attorneys were content to allow Mr F to have access to and control of his accounts *after* lodging this LPA with Lloyds, whilst they had, it seems, the almost concurrent concerns,

about his ability to carry out *"executive actions"* in branch just weeks later in January 2022. It may be the case that the attorneys only became aware of these concerns later - perhaps when there was the subsequent deterioration and diagnosis they refer to. If so, I don't think it's fair or reasonable to expect the bank to have had that knowledge about Mr F's health, and, in turn, capacity, in January 2022 when the attorneys themselves didn't. And either way I don't think it's unreasonable for the bank to act on a donor's instructions where he's so recently been allowed to *retain account access* on the registration of an LPA.

I don't doubt the attorneys were acting both in good faith and in Mr F's best interests when they notified the bank about this LPA. And that - in allowing Mr F *to retain access* - they were acting in line with the five principles set out in the MCA, particularly the presumption of capacity. But, when I'm being asked to make findings on whether Lloyds did enough when acting on a potentially vulnerable persons instructions, I think it's reasonable for me to look not only at what Lloyds knew on 10 January 2022 but also the attorney's own assessment of Mr F's level of understanding and ability to make decisions just a short time before. And, it seems to me, the attorney's own assessment of Mr F's capacity, just a matter of weeks before, on lodging the LPA with the bank, was such that they were happy to allow *Mr F to continue to operate his accounts* alongside his attorneys.

Given this, I find the attorneys argument - that Mr F's ability to be upset and distressed at this situation doesn't suggest or reflect his level of mental capacity to carry out "*executive actions*" or appreciate the consequences of a particular course of action - unpersuasive. I find it difficult to accept that line of thinking when these attorneys - holding that opinion on Mr F's ability to make *executive* decisions - were clearly content for him to retain control over the account on lodging the LPA just three weeks beforehand. If the attorneys themselves held these concerns about Mr F understanding of *"executive actions"* surely it wasn't acceptable to allow Mr F to continue making decisions about this account and operating it?

So, I'm not persuaded it's reasonable to say the bank did anything wrong when - just three weeks later - after meeting Mr F in branch, having an LPA allowing him *to continue to operate his accounts*, checking he wanted to go ahead with this, acted on his instructions. And I think the same applies to the visual impairment the attorneys have described. There's nothing to suggest this came about suddenly so, on balance, I think it's likely to have been in place and known to the attorneys when they lodged this LPA with the bank allowing Mr F to retain access.

So, for these reasons, I'm not persuaded bank did anything wrong here. The attorneys have been aware of the principles of the MCA, under which they must operate, as far back as 2010 when they signed this LPA agreeing to act. As our investigator has set out in her view, the onus is on the Attorney to report the donor's condition and make a declaration about whether a donor still has capacity. Without knowing the concerns, the attorneys *now* express I can't see how that the bank ought to have acted any differently on 10 January 2022.

So, I don't think Lloyds have acted unreasonably in relation to the application to remove Mr F from the account. Given my findings, it wouldn't be fair or reasonable for me to require Lloyds to do anything further here.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 March 2024.

Annabel O'Sullivan
Ombudsman