

The complaint

Ms K is represented in this complaint by her solicitor, to whom she has granted a power of attorney. Her complaint is that National Westminster Bank Plc has been ignoring correspondence from both of them.

What happened

Several years ago Ms K executed a power of attorney in which she named her solicitor, Mr C, as the donee. This was because she was moving to live permanently abroad, and she needed someone in the UK to manage her bank account here, as her pension is paid to her through her NatWest account. The original deed was deposited with a branch of NatWest. In March 2019, Mr C wrote to the bank to ask it to send him her bank statements. In this letter, he mentioned that Ms K had written a number of letters to the bank but had received no reply. On receiving no reply to his letter, Mr C wrote a second letter in April, a third letter in May, and a fourth letter in June. In the fourth letter he raised a formal complaint that both he and his client were being ignored by the bank.

Meanwhile in late May, between Mr C's third and fourth letters, NatWest sent its final response letter to Ms K's former address in the UK (having treated Mr C's third letter as a complaint), because it had not received a formal request to update her address to the one overseas. In this letter, NatWest apologised for the delay in responding, and said that it could not reply to Mr C because it did not have the power of attorney deed (which was not true). This letter did not otherwise address the bank's failure to reply to Ms K's own letters. So Mr C brought this complaint to our Service, on her behalf (and sent us a certified copy of the deed).

NatWest told our investigator that it actually did have the deed, but had not updated the account accordingly because there was a form that Mr C had to fill in first, and he was required to attend the branch to do this. Until that happened, it could not allow him access to the account. But it said it had still sent bank statements to Mr C, as requested, in early April. Mr C did not receive these, but our investigator did not think that was NatWest's fault. The investigator also thought that, having already sent the bank statements, the bank did not have to reply to Mr C's subsequent letters. The investigator did not uphold this complaint. Mr C did not accept that opinion. He said there was no excuse for the bank not replying to the letters he had sent after it had sent the statements (and he was not convinced that the statements had ever been sent). He said the bank's refusal to engage meaningfully with him or with his client had caused Ms K to incur avoidable legal fees, and had inconvenienced her. He asked for an ombudsman's decision.

I wrote a provisional decision which read as follows.

What I've provisionally decided – and why

I would like to take this opportunity to apologise to both parties, and to Mr C, for how long it has taken for this case to be assigned to an ombudsman.

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

No explanation has been given for why NatWest did not reply to Ms K's own letters. It might be because they were not sent from the old UK address the bank still had on file for her, but from her new overseas address. I accept (in the absence of any suggestion to the contrary) that she had not told the bank that she had permanently moved. So even if the bank had replied, it would have had to send the replies to her old address in the UK, and she would still not have received them. So I am not minded to uphold that part of this complaint.

According to NatWest's internal notes, it sent Mr C the bank statements he'd asked for in his first letter. It took a full month to get around to doing this, but it did it before he sent the second letter. I accept that they were sent. I also accept that Mr C did not receive them, but I cannot be satisfied that this is NatWest's fault. They may have been lost in the post, for example, and I can't hold the bank responsible for that.

The statements and Mr C's second letter may well have crossed in the post, but I don't agree that that is a good enough excuse for not replying to the second letter. It would have been professional to acknowledge having received it. If that had been NatWest's only error, then I would not have considered this to be worthy of financial compensation, but it was compounded by the bank's failure to reply to Mr C's third letter, in which he said that he had still not received any response to his first two letters. I think that on receiving the third letter, NatWest should have sent him the statements again. It should also have informed him that it was not willing to do more than that until he attended the branch and completed the bank's process for registering the power of attorney. (Indeed, NatWest should have told him that in its reply to his first letter, when it sent the bank statements, but if that correspondence was not received then the bank's failure to explain that was harmless.)

NatWest did respond to Mr C's third letter, in the sense that it sent a final response letter to Ms K at her old address. But I don't think that was enough, because it did not enclose the statements she had asked for, even though it knew by then that her solicitor had not received the original batch of statements.

NatWest did not reply to Mr C's fourth letter. If it was not willing to correspond with him because he had not completed the bank's internal process for setting up a power of attorney, then it ought to at least have written to him to tell him that much. It told Ms K that in its letter to her, but I don't think that was enough, because by then it had received information that she was now living abroad, so she might not receive a letter sent to her old address. I cannot award compensation for any inconvenience caused to Mr C, because he is not an eligible complainant in his own right. But I can award compensation to Ms K for her own inconvenience. Mr C has said that because of the delays caused by NatWest, Ms K has incurred legal fees, which I assume are for his letters. I invite him to tell me how much these fees come to, and to elaborate on the impact the delay in obtaining statements has had on her, so that I can assess how much to award her if I uphold this complaint in my final decision.

Responses to my provisional findings

Mr C told me that he expects to bill Ms K for four hours' work at £350 plus VAT an hour. He says that three and a half hours of that was for his correspondence with the bank and the branch visits, and half an hour in relation to bringing this complaint to our Service. (I shared this information with NatWest, and it had nothing to add to this or to my provisional 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.

I will not award compensation for the costs incurred in bringing this complaint, since it is generally not necessary to obtain legal representation to bring a complaint to the Financial Ombudsman Service. Ms K could have emailed us herself. Her remaining costs total £1,225 plus VAT, or £1,470. So I will award that, plus a further £250 for her inconvenience.

My final decision

My decision is that I uphold this complaint. I order National Westminster Bank Plc to:

- Pay Ms K £1,720, and
- Engage with Mr C and actively assist him in completing the bank's process for recognising Ms K's power of attorney.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 3 December 2020. Mr C may reply on her behalf.

Richard Wood
Ombudsman