

The complaint

A partnership which I'll refer to as N, complains that when it approached National Westminster Bank Plc (NatWest) to open an account, the bank gave it misleading information which caused it to select the wrong type of account to be opened.

One of N's partners Mr C brings the complaint on the partnership's behalf.

What happened

The background to this complaint is well known to the parties so, I won't repeat it in detail.

Briefly, N has told us that:

- In January 2019 it contacted NatWest to say it needed to open a US Dollar account and asked the bank to send it the account opening forms for completion.
- A relationship manager at the bank, Mr K, sent N the relevant forms which included a currency account application form.
- Mr H, an employee of N completed the application form on its behalf. In the section on the form marked "Type of Account" there were two options: a box for a current account and another for a currency reserve account. There was also another section marked "Currency Required". For that section Mr H selected "USD".
- However, when it came to the "Type of Account", N said Mr H was unsure which of the two boxes to tick. So, on 21 January 2019 he phoned the bank for help and spoke to Mr K. And based on his conversation with Mr K, Mr H ticked the box indicating N wished to open the current account. On behalf of N, Mr C signed the application form and returned it to the bank. NatWest opened the current account (the Account) as instructed which was intended to hold funds belonging to one of N's clients.
- In December 2019, N enquired what level of interest was paid on the Account. But NatWest told N that it was not interest-bearing. According to N that was the first it knew of the position and it blamed NatWest for opening the wrong account.

NatWest didn't think they were at fault. In their final response letter, they said after reviewing the account opening documents which Mr C had signed, they were satisfied they'd opened the correct account for N. They also said they were unable to find any records of the phone conversation Mr H allegedly had with Mr K on 21 January 2019. However, NatWest said they regretted to hear that during that phone conversation, potentially N may have been given unhelpful information. So, a gesture towards any inconvenience N may have experienced, NatWest credited N's account with £1,000 as compensation. Later, the bank opened a currency reserve account for N which is an interest-bearing account.

N didn't think NatWest had done enough to put things right. In addition to the action they had taken so far, N wanted NatWest to also pay N the interest that would have accrued had the currency reserve account been opened in the first place.

Our investigator didn't think NatWest had done anything wrong. He observed that Mr H did tick the box requesting the opening of a current account even though the option to open a currency reserve account was also available.

Although he noted N's submission that when completing the application form Mr H relied on information he allegedly received from Mr K during their 21 January 2019 phone conversation, he said since the bank had no record of the phone call he was unable to determine the nature of that discussion.

But the investigator noted NatWest's final response acknowledgement regarding the 21 January 2019 phone call between Mr H and Mr K for which it had already paid compensation. He believed the £1000 compensation was fair and reasonable in the circumstances of N's case and therefore NatWest needn't take any further action.

N didn't accept the investigator's conclusion and so its case has been passed to me for review and final decision. In its submission N has made a number of detailed points. No discourtesy is intended towards N but I summarise those I regard as the key ones as follows:

- The recording of the 21 January 2019 telephone call would have demonstrated the accuracy of N's evidence that based on what Mr K told Mr H he ticked the box indicating N wanted to open the Account. The loss of the call recording by NatWest should not weigh in its favour.
- Mr H had no previous experiencing of opening accounts with the bank. In January 2019 he told NatWest that the account N wanted to open was intended for a client. So, in effect N was asking the bank for an application form to open an account similar to those it already held on behalf of its other clients - which were interest bearing.
- Furthermore, after the application form was submitted to NatWest, on 22 January 2019, Mr K wrote to N to apologise for failing to note the Account was intended for a third party client and asked N to complete an additional form – known as a Non-Financial Intermediary Form in order to put things right. Mr K failed to notice the Account was not interest bearing and omitted to question why the account being opened was different to that of the typical client deposit accounts held at the bank.
- In any event from their final response letter it seems NatWest accepted they may have provided N with incorrect information in the January 2019 phone call. And as well apologizing, they paid compensation to N. But since a significant loss has occurred because of the bank's failings, its compensation hasn't gone far enough.

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.

There is no dispute as indeed the opening documentation shows that on N's behalf Mr H ticked the box indicating N wished to open a current account rather than the currency reserve account. Mr H also indicated the currency required was US Dollars and Mr C signed the application form confirming those instructions to the bank.

Having therefore opened the Account for N - a current account which by ticking the box N instructed the bank to open, it would be difficult to conclude NatWest did anything wrong.

But I note it is N's case that it was guided towards that selection on the basis of information provided in a telephone conversation between Mr H and Mr K on 21 January 2019. It is also N's case that the incorrect information related to the specific box Mr H needed to select for the type of account N required.

As noted above, unfortunately, the bank has no recording the 21 January 2019 phone call. And NatWest have told us Mr K is no longer employed at the bank and therefore cannot provide a statement of his recollection of the 21 January 2019 events. The bank says the only items of evidence that's currently available are the opening documents and email exchanges between Mr K and Mr H at the time.

Given the absence of any call recording on 21 January 2019, I am unable to determine what was said and what information or guidance was given to Mr H by Mr K. So, I've had to base my decision on the evidence that is available and where it is unclear or inconclusive, I've come to a decision on balance of probabilities – that is to say what is more likely to have occurred based on the actual evidence available.

To that end I've considered the January 2019 e-mail exchanges between Mr H and Mr K. I've considered carefully too the statement Mr H has very helpfully provided in support of N's case.

I start by saying that in general if a customer of a bank asks it for information on a matter, it is reasonable for the customer to expect that where the bank provides such information it is accurate.

With that in mind, in the circumstances of N's case for me to be able to conclude that in January 2019 NatWest was at fault by giving N wrong information, I have to be persuaded N was clear in terms of the information it asked the bank for, the response to which the bank gave it wrong information.

I do not doubt that in January 2019 N intended to open an account for one of its clients. But I'm not persuaded that when N first approached the bank that was made clear. In N's email dated 10 January 2019 it asked NatWest for forms to open a US Dollar account. There was no mention it was for a client. NatWest sent the relevant forms. I'm not persuaded the wrong forms were sent to N.

After the currency application form was returned, on 22 January 2019, and the day after N has told us the conversation between Mr H and Mr K regarding its completion took place, Mr K wrote to Mr H as follows:

"I am just in the process of looking at your new US Dollar account you would like to be opened. Apologies but I was not aware that this account was to be used to hold funds on behalf of a third party. As this is the case, we will need a non-financial intermediary form to be completed."

This was then arranged as N has told us.

It is of course N's case, that the phone conversation with Mr K, that took place a day earlier – on 21 January 2019 - he specifically explained that the Account was intended to hold funds for a client.

Mr K's email does not refer to the telephone conversation. More importantly, given the detailed nature of the discussion Mr H said took place - including his explanation that the Account was intended for one of N's clients, on such a critical point, it is difficult to see how Mr K could have so misinterpreted that discussion given the contents of his e-mail.

That being said, the completion of the "non-financial intermediary form" did put that right. So, what made the Account the wrong type was its failure to attract interest. which is also at the heart of N's case. And the reason for that as it argues was that NatWest directed it towards opting for the Account.

So, I've considered very carefully Mr H's evidence on that point. Mr H said he made it clear that the account was required to hold money for a client. And that he'd noted that the currency account application form made reference to the possibility interest may be paid into another account. He said the fact that interest was mentioned led him to believe when discussing the Account with Mr K that it was an interest-bearing account that they were discussing. But importantly Mr H acknowledged Mr K did not ask him about interest or mention that the Account was not an interest-bearing account and he did not feel any need to clarify this.

But given this was such an important component in N's decision regarding the choice of account it wouldn't have been an unreasonable expectation that this would be specifically discussed and clarified by Mr H.

On balance it seems to me that Mr H's evidence supports the proposition that he himself assumed the Account was interest bearing. He had no discussion with Mr K as to whether or not that was the case because he didn't think he needed to. That suggests in all likelihood Mr K was not asked which account Mr H needed to opt for to ensure interest was received and that in turn Mr K directed him to tick the wrong box on the application form.

I appreciate N has explained that since NatWest held other clients' accounts that were interest bearing Mr K should with that knowledge have alerted Mr H that the Account wasn't an appropriate account for N. However, I do not agree. I do not find the bank had an obligation to question the type of account it was being asked to open.

I turn next to NatWest's decision to pay N £1000 as compensation.

NatWest have said the £1000 was paid as a goodwill gesture only. I do not interpret the bank's final response letter as an acceptance it had done anything wrong for which it had agreed to pay compensation. It seems to me the bank was doing no more than acknowledging what it had been told by N about the 21 January 2019 conversation. And indeed, it commented it was unable to substantiate from its records what was allegedly said in the conversation. So, I do not find the offer was anything other than a gesture of goodwill as indicated by the bank rather than an acceptance that it had done anything wrong

My final decision

For the reasons stated above my final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 28 October 2022.

Asher Gordon
Ombudsman