

The complaint

The trustees of a trust, which I will call Trust E, complain about the actions of National Westminster Bank Plc. They are represented by Mr S (who is himself one of the trustees).

Mr S complains that NatWest's processes are not fit for purpose in respect of trust bank accounts. Specifically, he complains that NatWest wrongly placed restrictions on Trust E's account, with the result that payments could not be made to the trust's beneficiary.

To resolve the complaint, Mr S would like NatWest to reimburse Trust E for the trustees' fees in relation to this issue, and to pay compensation for the inconvenience of having to repeatedly provide the same information to NatWest. He would also like NatWest to confirm that it now has all the information it needs, and that it will not be placing restrictions on Trust E's account in future. Finally, he would like NatWest to change its processes in respect of trust accounts.

This final decision relates to the trustees' complaint about Trust E's bank account only. However, the circumstances that led to this complaint are very similar to the circumstances that have led to other complaints Mr S has asked me to consider. I hope both he and NatWest will understand that that means there are also similarities in the way I have chosen to express my findings about his various complaints.

What happened

The background to this complaint is complex, and involves a great deal of correspondence between Mr S and the bank. I confirm I have read all the evidence both parties have provided, but I'll briefly summarise the situation as follows:

- Mr S is a trustee of four trusts, each of which bank with NatWest. Trust E is one of those four trusts. (He is also a NatWest customer in his personal capacity, but his personal accounts are not directly relevant here.)
- In 2021, he attempted to make changes to the mandate for the other three trusts (not Trust E), and to access online banking. He and his fellow trustees attempted to provide NatWest with information about the trusts, and to satisfy it that they were who they said they were – but they experienced significant difficulties. NatWest accepted that it did not handle that matter well. The 2021 complaints were resolved in April 2022 following involvement from one of our investigators.
- Shortly after the 2021 complaints were resolved, NatWest began a review of the evidence it had on file about Trust E – and decided that it needed further information. I do not believe that review was in any way related to the 2021 complaints.
- In March 2022, Mr S made further complaints (which I will refer to collectively as the 2022 complaints). This complaint about Trust E is one of the 2022 complaints.

- NatWest told us that it did not receive the information it needed in respect of Trust E, and so it applied a restriction to the trust's bank account. It later removed that restriction pending the completion of our investigation into the matter.
- Mr S's 2022 complaints were referred to a second investigator (not the one who looked at the 2021 complaints). The second investigator did not uphold the complaints. In relation to Trust E, he said that the systems NatWest uses and the information it requests is a business decision for the bank. He said NatWest had been clear about the information it required from Mr S and his fellow trustees, and that the bank had also been clear that it would restrict Trust E's account if it didn't receive the information it had asked for. Given that NatWest was carrying out its regulatory requirements, our investigator didn't think the bank had done anything wrong – so he didn't think it would be fair to recommend compensation.

Mr S did not accept our investigator's conclusions about the 2022 complaints. He said he had demonstrated to both our service and to the bank, that he and his fellow trustees had provided all the documentation the bank had asked for. He said they provided that documentation by post, through the business profile portal or by a personal visit to a bank branch. He also said he does not and cannot accept that NatWest is entitled to seek information based on a Trust being a business.

Our investigator could not reach agreement between the trustees and the bank, and so the 2022 complaints were passed to me.

My provisional decision

I issued a provisional decision on this complaint in February 2023. Briefly, my provisional findings were:

- NatWest did not treat the trustees of Trust E fairly.
- To put the matter right, NatWest should pay the trustees of Trust E £500.
- NatWest should state clearly what information it needs from the trustees, and give them one month to provide that information.

In more detail, I said:

“My role as an ombudsman

I acknowledge Mr S's belief that our investigator has been “hiding behind rules and regulations”. I am sorry to cause him further disappointment, but I anticipate he will be equally frustrated with me. I don't accept that I am hiding behind rules, but some of the requests Mr S has made – for example, that I consider whether the bank's business practices are fit for purpose – lie outside of my powers.

I am an ombudsman, not a regulator. That means it is not appropriate for me to prescribe the maximum (or minimum) time periods between NatWest asking its customers for identity evidence. I cannot order NatWest to change its overall processes (including the fact it asks trustees to use its Business Profile Portal, or BPP), nor can I order it to change the way in which it trains its staff.

My powers are explained in more detail in the Dispute Resolution chapter of the Financial Conduct Authority's Handbook, which can be found online at <https://www.handbook.fca.org.uk/handbook/DISP/>.

In addition, I am only able to consider complaints which have been properly referred to me, and which the respondent firm has had a fair opportunity to address. I cannot decide of my own volition to begin an investigation, even where I have good reason to believe that the customer involved would welcome my involvement. And I cannot prejudice or predetermine a complaint that has yet to be made.

All I can do is look at a specific complaint that has been referred to me, taking into account the circumstances of that particular case, and determine the fair and reasonable outcome in that one case.

That means I can look at Mr S's complaint about the actions NatWest has already taken, but I cannot (yet) consider a complaint about any restriction the bank might apply in future.

Regardless of the merits of any particular case, I do not think it would be appropriate for me to attempt to issue a direction preventing a bank from ever applying a restriction to a particular account. I think the bank is right to say that it is legally required to regularly check that the information it holds about its customers is accurate and up-to-date. Given that I cannot possibly know what might happen in future, I cannot say now whether future events might lead the bank to be justified in applying a restriction.

Did NatWest treat the trustees fairly?

NatWest has considerable commercial discretion in the way it chooses to comply with its regulatory responsibilities. Mr S has not at any point disputed that, nor has he disputed NatWest's right to request information about its customers. His concern is about NatWest asking for information he cannot provide (such as the trust's website address), and about its requests for information that he says it has already been given and then misplaced.

I understand NatWest first contacted Mr S to ask for further information about Trust E in February 2022. Mr S told us he had a frustrating conversation with a member of NatWest's staff in March 2022 – he said the bank had assured him the call would take no longer than 15 minutes, but it was over an hour and still the bank's Business Profile Portal was not properly completed.

Over the next few months, there was substantial further correspondence between Mr S and NatWest. By the beginning of August 2022, Mr S's position was that he had submitted everything NatWest had asked for – and yet the bank still applied a restriction to Trust E's account, causing disruptions to the beneficiary's payments for a short period. Mr S had to arrange for Trust E's investment returns to be paid to his firm's client account instead of to Trust E's own bank account.

Mr S appears unclear as to what NatWest still needs – he thinks he's provided everything it has asked for at least once, and some of those things several times over. I am similarly confused; it is not at all clear to me what NatWest still needs from Trust E's trustees. I am therefore unable to conclude that NatWest has explained its position in a way understandable to Mr S. I do not think the bank has done enough to tell the trustees what it needs in order to allow the trust's bank account to function as intended.

Having considered everything both parties have provided, I am satisfied that the trustees of Trust E provided identity evidence when they said they did. I am also satisfied that, to the best of their ability, they did comply with NatWest's requests that they provide information about the trust.

I acknowledge that NatWest says it is not now in possession of the documents it needs. I accept that. But I think the two most likely explanations for the lack of documents are that either NatWest has misplaced the documents it received, or that NatWest did not tell the trustees what it still needed and so the trustees had no opportunity to provide those documents.

Putting things right

In this case, I think there are two things NatWest needs to put right. Firstly, it should ensure that its records in respect of Trust E are now correct. Secondly, it should compensate the trustees for the distress and inconvenience its errors have already caused.

It appears the parties are at something of an impasse in respect of NatWest's records. Mr S says – and I accept – that he has provided the information NatWest requested many times over. He does not wish to provide the information again, presumably because he believes doing so will merely cause inconvenience to him without actually moving matter forward.

NatWest says – and again I accept its evidence – that it does not in fact have the information it needs to comply with its regulatory requirements. Regardless of why NatWest does not have that information, I am not prepared to make an order requiring NatWest to ignore those requirements.

To resolve the matter, I propose the following:

- Within one month of E's trustees accepting my final decision, NatWest should write to the trustees setting out precisely what information it needs in respect of Trust E, and giving them a named contact and address to send that information to.
- E's trustees should then be able to provide the information NatWest needs. I acknowledge that that will cause them further inconvenience, and I have taken that into account in the compensation I suggest below.
- NatWest should give the trustees a month to respond to its information request. Until that month has expired, NatWest should not use the fact it does not have the information it has asked for to apply restrictions to Trust E's account. (I should make clear that I do not intend to prevent NatWest from applying a restriction should it believe it needs to do so for some other reason, for example if it were to receive new information that caused it concern.)

I hope NatWest will choose to respond to this provisional decision by giving me a detailed explanation of the information it still requires. But it is not bound by this provisional decision, and it will not be bound by my final decision unless and until the trustees accept that decision.

So far as financial compensation is concerned, I'm currently minded to award £500. I know that is much less than Mr S believes is fair, and that NatWest believes it should not have to make a payment at all. But in reaching that figure, I have in mind:

- This is not a case in which NatWest has made previous errors in respect of the trustees' identity evidence. I accept that the confusion over the information NatWest still needs will have caused the trustees distress, but this is not a case in which the trustees' distress will have been compounded by previous errors.
- We do not usually award compensation at a complainant's hourly rate; we do not value one person's time over another's.
- In addition, we do not usually make awards for the time complainants spend in making complaints, either to us or to the firm involved.
- We do consider the impact that the business's mistake had on the individual complainant. Here, the beneficiary's income payment was disrupted in August 2022, but that amount was relatively small and I've seen nothing to suggest that the delay caused any particular problems for the beneficiary. However, the fact Mr S had to arrange for the beneficiary's income payments to be made through his firm's client account rather than from the trust's own bank account will have caused further inconvenience to Mr S.
- Mr S will now need to provide further documentary evidence to NatWest yet again. Had he been providing evidence for the first time, I would not have awarded any compensation. But I think the evidence suggests that NatWest has not been clear about the evidence it needs from Trust E's trustees. I'm satisfied that Mr S has made previous attempts to answer NatWest's questions, and so I think the trustees should be compensated for having to do so again.

It is of course possible that, on receipt of this provisional decision, NatWest will conduct a thorough search and determine that in fact it does have the documents it needs after all. If it chooses to carry out a search, it may wish to start by looking to see if any of the documents it needs in respect of Trust E have been misfiled against other trusts Mr S is associated with.

The compensation I intend to award is based on the assumption that NatWest in fact cannot find the documents it needs, and Trust E's trustees will need to provide those documents again. If that turns out not to be the case – and NatWest is able to reassure me that it does not immediately need anything further from the trustees – then it's likely I will reduce the amount of compensation that I think is fair."

Neither party accepted my provisional decision.

Briefly, NatWest said:

- It questions the fairness of issuing a decision on events which have taken place after the bank's final response, and which the bank has not yet been given ample opportunity to investigate. However, having fully investigated those events its position is that there has been no bank error.
- The account was restricted on 19 July 2022. At that point, it had already written to the

customer several times to confirm that they needed to supply information and identification, and it had warned the customer that failure to respond in full would result in the account being restricted. It has no record of the customer having made any calls to say that they were having any difficulties or that they had already supplied the documents.

- Its customer portal and FAQ are very clear about its requirements. The previous online ID attempts by the trustees did not work and this was clearly shown on the customer portal with the option to send another online request or to uphold documents.
- It has no evidence to show that the trustees uploaded the trust deed to its portal before 16 May 2022.
- It wrote to its customer on 15 July 2022 to say that it needed a “*Trust Lawyer/Accountant Letter form*” to be completed. The customer supplied that form on 5 August 2022.
- The “*secondary online ID requests*” for the trustees were subsequently completed, and the account restriction was removed on 16 August 2022 with the review being completed on 5 October 2022 with no further outstanding requirements.
- It has checked its files for the other three trusts Mr S is associated with, and has not found any documents incorrectly uploaded to those files in respect of Trust E. It has also found no evidence of duplicated uploads or requests for evidence has already been supplied.
- Overall, it considers that the account was restricted correctly due to the outstanding requirements at the time. There is no evidence the customers had already supplied the information required, nor that they had attempted to mitigate their risk by calling prior to the restriction date to explain that they were having difficulties. It therefore does not agree that it should have to pay any compensation in respect of this complaint.

In summary, Mr S said:

- An award of £500 would not properly factor in the level of distress and inconvenience suffered by the trustees and the beneficiary, nor does it compensate for lack of access to the trust’s money. He does not believe that it would represent fair and reasonable compensation in all the circumstances of the complaint.
- He has received no explanation as to why he is required to provide identity evidence separately in respect of all four of the trusts.
- He finds it disturbing that I have made no reference to NatWest’s failure to comply with the timescales required for dealing with the complaint he made on 27 April 2022. NatWest has also ignored the request he made in his complaint that he be provided with a transcript of what I described in my provisional decision as “*the frustrating conversation with a member of NatWest’s staff*”, and he asks why I did not address that failure. He considers that the compensation award should be increased to reflect the additional distress he suffered as a result of NatWest’s failures in that regard.
- The beneficiary’s dependence upon the monthly income from Trust E was exacerbated by the pandemic, but that has been ignored. The beneficiary must be

treated as a vulnerable adult. The payments the beneficiary received from the trust were not “*small*” in the context of his income, and he should receive compensation for the distress that he suffered.

- NatWest continued to levy monthly bank charges whilst providing poor service, and it should refund those charges.
- He considers that I should make an award for his professional costs, which as at February 2023 were almost £6,000 (and have since increased).
- He also considers that NatWest did not provide a service which was “*prompt, efficient and fair*”, and therefore that it has breached regulations in the Banking Conduct of Business Sourcebook (BCOBS). He also considers that it has breached the Payment Services Regulations 2017 (PSRs) in respect of delay in carrying out payment instructions. He notes that the Financial Services and Markets Act 2000 (FSMA) provides a route for damages in the event of such a breach.

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.

Both parties have provided detailed responses to my provisional decision. I confirm that I have read and considered everything they have said, but I have not responded to every point they have made. I intend no discourtesy by that; it simply reflects the informal nature of the Financial Ombudsman Service.

When I issued my February 2023 provisional decision, I hadn’t realised that NatWest had completed its review in October 2022. I thought the review was still ongoing and that the trustees might have to provide further information – but I also thought the trustees had already provided everything NatWest said it needed, so I wasn’t clear on what more NatWest wanted.

In light of NatWest’s response to my provisional decision, I am satisfied that NatWest does not in fact want any additional information in order to carry out its KYC review for Trust E. That means I no longer think it would be fair for me to order NatWest to pay the trustees compensation for having to provide that additional information.

I know Mr S will be disappointed that I have not looked more broadly at the way NatWest handles trust accounts. As I said in my provisional decision, I am an ombudsman not a regulator, and I have no power to carry out the review he would like. I am only able to look at this individual complaint, and it would not be appropriate for me to make any more general comments about how NatWest should treat trustees, or about how (if at all) it should link accounts for trusts with trustees in common.

I acknowledge that Mr S believes I have the power to make an award to the beneficiary for distress that he has suffered, but he is mistaken on that point. The beneficiary is not an eligible complainant under our rules, and I have no power to make an award for losses suffered by third parties. I accept that knowledge of the beneficiary’s distress may itself have been distressing to the trustees, but I am also mindful that as solicitors the trustees were able to take action to mitigate the problems the beneficiary suffered (in that they could arrange for payments to the beneficiary to be made via their client account). I acknowledge that action would have caused some inconvenience to the trustees, and I have taken that into account in considering my award.

In addition, I do not have the power to investigate the way a bank has handled a complaint. Complaint handling is not an activity covered under our rules. The activities we do cover are set out in full at DISP 2.3 (<https://www.handbook.fca.org.uk/handbook/DISP/2/3.html>).

I do have the power to make an award for professional costs where I believe it is fair and reasonable for me to do so. But I make no such award here. Mr S is bringing this complaint in his capacity as a trustee. NatWest is entitled to ask him, as a trustee, to comply with its KYC process. Given the circumstances here, I see no basis on which I could fairly require NatWest to reimburse his costs in complying with that process or in bringing his complaint to our service.

I also have the power to order a bank to refund charges, but again I may only do so where I believe that is a fair and reasonable resolution to the complaint. Here, NatWest has provided a banking service to Trust E throughout. There have been deficiencies in that service – hence my award for inconvenience – but I see no reason why NatWest should not be entitled to charge for the services it has provided.

Finally, I confirm that I have taken the relevant rules and regulations into account before reaching the overall conclusion that a payment of £250 to the trustees represents fair compensation. I acknowledge that Mr S considers that I have reached the wrong conclusion. The trustees are not required to accept my decision, and if they choose not to do so it will not be binding on them or the bank. If they reject my decision, any legal rights they may have will not be affected by my consideration of their complaint.

Putting things right

Taking into account all the information both parties have provided, I now consider that the fair and reasonable outcome to this complaint would be for NatWest to pay the trustees £250 for the inconvenience they have suffered. In saying that, I have in mind:

- Everyone agrees that the trustees' initial attempts to verify their ID using NatWest's portal did not work. The parties have conflicting views as to why that did not work. In principle I have no objection to NatWest asking its customers to submit information via an online portal so long as it provides alternatives for those who can't do so – and here it did provide alternatives.
- However, I still think NatWest has made errors, and that the KYC process was unnecessarily protracted. As I explained in my provisional decision, having considered all of NatWest's evidence I was unable to establish what the bank wanted the trustees to do – so I couldn't (and still can't) conclude that the bank had set out its requirements clearly. I also note that the bank restricted Trust E's account just a few days after it requested the "*Trust Lawyer/Accountant Letter form*", and I do not consider that it gave the trustees enough time to comply with its requests.
- In the specific circumstances of this complaint, I think it is appropriate for me to take into account events that happened after the bank issued its final response. The complaint here is about the way the bank carried out its KYC process, and the subsequent events I have considered relate to the consequences of the initial act complained of. In any event, I am satisfied that NatWest has had ample opportunity to set out its position, and it has done so.
- Overall, I think that if NatWest had been clear earlier about what it needed, it is unlikely to have needed to apply a restriction to Trust E's account in July 2022 (and possibly not at all). In that case the trustees would have had access to the money in

Trust E's account between 19 July and 16 August 2022. The trustees would not then have suffered the inconvenience of having to arrange an alternative way for the beneficiary to receive income payments. They should be compensated for that inconvenience.

- Looking at everything that happened, and applying my own judgement, my opinion is that a payment of £250 represents fair compensation for the distress and inconvenience suffered by the trustees.

My final decision

My final decision is that I order National Westminster Bank Plc to pay the trustees of Trust E £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Trust E to accept or reject my decision before 25 August 2023.

Laura Colman
Ombudsman