

## **The complaint**

The trustees of a trust, which I will call Trust L, 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.

To resolve the complaint, Mr S would like NatWest to reimburse Trust L 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 L'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 L'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 L 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 three of those four trusts, including Trust L, 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, and NatWest paid compensation in respect of Trust L.
- Shortly after the 2021 complaints were resolved, NatWest requested further evidence from the trustees. It told us it did not have enough information about the people involved with Trust L, so it was unable to meet its regulatory obligations in respect of the trust.
- In March 2022, Mr S made further complaints (which I will refer to collectively as the 2022 complaints). This complaint about Trust L is one of the 2022 complaints.

- 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 L, 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 L'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. I was aware that the beneficiary of Trust L was in poor health at that time, but sadly she has since died. I understand from Mr S that that means Trust L will be wound up and its assets distributed to specified charities.

Briefly, my provisional findings were:

- NatWest did not treat the trustees of Trust L fairly.
- To put the matter right, NatWest should pay the trustees of Trust L £400.
- 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. In addition, I do not think it would be appropriate for me to look again at any of Mr S's 2021 complaints, because they have already been resolved.

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 L in March 2022. Mr S told us that he and some of his colleagues then spent a frustrating few months trying to provide the information the bank had requested, but they have not yet been able to resolve matters.

In mid May 2022 NatWest told us that although it had sent the trustees of Trust L several requests for information, as at that point the trustees had answered all of the questions it had asked. NatWest said that at that point there had been no bank error.

I can see that over the next few weeks there was substantial further correspondence between Mr S and the bank, with the bank asking for further information and Mr S either attempting to provide that information or explaining that he had already done so. By the end of June 2022, Mr S's position was that he intended to ignore the bank's further requests for information because he had already provided the evidence it had asked for.

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 L'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.

I am also unclear why NatWest needs some of the information it has asked for. As an example, I can see that it has requested a telephone number for the life tenant of Trust L. But given Mr S's description of the beneficiary's circumstances, I think it is possible that she does not have a telephone number – and she might not be able to answer the bank's questions even if she does. I therefore hope the bank is able to accept alternatives if Mr S cannot provide everything it has asked for.

In the circumstances of this particular complaint, I haven't seen anything that has persuaded me that NatWest has lost or misplaced any documents in relation to Trust L. But I do think that its customer service has been poor. I acknowledge that it isn't always possible for a bank to ask all of its questions upfront – sometimes its customer's answers will quite reasonably prompt further questions – but NatWest's information gathering here does appear to have become unusually protracted. Based on the evidence currently available to me, I do not see why the information gathering has taken so long. That means I do not think the bank treated the trustees of Trust L fairly.

### **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 L 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 Trust L's trustees accepting my final decision, NatWest should write to the trustees setting out precisely what information it needs in respect of Trust L, and giving them a named contact and address to send that information to.
- Trust L'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 L'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 £400. I know that is much less than Mr S believes is fair, and that NatWest believes it should not have to make any payment at all. But in reaching that figure, I have in mind:

- Trust L's trustees have already accepted compensation in April 2022 in respect of NatWest's errors up to that point. It would not be right for me to compensate them again for the same errors.
- We do not usually award compensation at a complainant's hourly rate; we do not value one person's time over another's. I make no criticism of Mr S's schedule of costs (other than where it covers costs incurred prior to April 2022), but my award is not based on that schedule.
- 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. In this case, I think the distress of Trust L's trustees would have been compounded by the fact they had only very recently had to make a complaint about a closely related issue, and that they believed NatWest had resolved any issues it had with its records. I acknowledge that the bank is required to keep its records up-to-date, but if it had needed anything further from the trustees I think it should have asked for that information as part of the resolution of the previous complaint.
- Whilst NatWest has said it intended to put a restriction on Trust L's account, I don't think it has actually done so – which means there has been no interruption to payments made to the beneficiary. (But if I am wrong about that – or about anything else I have said in this provisional decision – I ask the parties to let me know.)
- Mr S will now need to provide 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 Trust L's trustees have made many 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 L 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 L'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.

NatWest told us:

- Whilst it understands the business profile review process might appear protracted from the outside, there has been no bank error and no detriment to its customer – so it does not agree that any financial award is warranted in this case.
- In any event, the evidence gathering is entirely reliant on the customer supplying the necessary evidence, and any alleged delays could have been mitigated by the customer complying with the process. The review is a step by step process, so the bank cannot possibly know all eventual requirements until a customer does start to submit information – and once this is reviewed it may flag up that further information is required.
- It has no evidence that the trust deed was uploaded to its customer portal until 16 May 2022. It subsequently wrote to the trustees on 8 July 2022 to confirm that it needed a *"trust lawyer/accountant letter form"*, which the customer supplied on 1 August 2022.
- It was unable to electronically identify Mr S because the residential address he originally provided on its portal was his firm's address rather than the address of his own home. That was Mr S's error, and resulted the bank requesting identity documents being required to verify that he lived at the address he input on the portal. Given that it is aware from Mr S's other complaints that he does not live at his firm's address, it has made a manual amendment and is now able to electronically match his identity. It would however like to make clear that although it is aware of the linked cases, it cannot treat them all as one review or swap/share documents between them. The customer is responsible for each individual entity complying with their own reviews.
- It has still not received any identity evidence for the beneficiary of the trust, but the trustees have made it aware that she lives in a nursing home. It therefore telephoned one of the trustees in August 2022 explaining that it requires *"a letter from the care home manager signed and dated confirming that the individual is known to them, the individual's status as a resident of the care home, and the individual's full name, nationality, date of birth and care home address. [Our trusted third party] have arranged to now call back out to the customer to confirm the requirements as already explained because we cannot issue an ad-hoc letter. However, I trust your service will also pass the requirements on to the customer."*
- There have not been any undue or unreasonable delays in evidence gathering from the bank's side. It has written to the customer regularly to confirm they need to supply the outstanding information on the portal. The customer originally input his residential address incorrectly which prompted the requirement for identity evidence, but the bank has now resolved this. The bank made the trustees aware in August what was needed for the beneficiary's identification evidence, but the customer has still not supplied this. Any delay is solely on the part of the trustees and they have not

mitigated their risk in this regard.

Mr S told us:

- My proposed award of £400 is different to – and he believes inconsistent with – the awards I proposed in the three other trust cases he brought to our service. He does not believe it would 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 considers that the ombudsman service should make an award to both the trustees and to the beneficiary (or her estate). He does not accept that I have no power to make an award to the beneficiary.
- He has received no explanation as to why he is required to provide identity evidence separately in respect of all four of the trusts.
- NatWest continued to levy monthly bank charges whilst providing poor service.
- He considers that I should make an award for his professional costs, which as at February 2023 exceeded £5,000 (and have since increased).
- NatWest placed restrictions on the account such that income was not paid to the beneficiary, then removed those restrictions. It reinstated the restrictions following a telephone conversation he had with the bank in March 2023, during which he explained that he was not prepared to provide the letter from the care home manager NatWest had requested. He also explained that he believed the beneficiary's previous care home had closed, and he was unsure where she had been moved to – so he would need more time to comply with the bank's request.
- 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.
- NatWest has yet again placed a restriction on his online banking. He does not know why it has done so, and it requires that restriction to be removed immediately.

Although my provisional decision indicated that I intended to order NatWest to allow time for the trustees to comply with its information requests, I did not explicitly ask NatWest to keep Trust L's account open in the meantime. It then wrote to the trustees giving them notice that it intended to close Trust L's account. At my request, it put the closure on hold – but I understand the closure is merely on hold; the process has not been stopped.

### **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 me with extensive submissions, which I confirm I have read and considered in their entirety. But I won't respond in the same level of detail. I don't intend any discourtesy; my approach simply reflects the information nature of the ombudsman service.

I have reached the same overall conclusions as I did in my provisional decision, and I now confirm those provisional conclusions as final. Briefly:

- NatWest did not treat the trustees of Trust L fairly.
- To put the matter right, NatWest should pay the trustees of Trust L £400.
- NatWest should state clearly what information it needs from the trustees, and give them one month to provide that information.

However, I would like to make some additional comments in response to the parties' comments about my provisional decision.

I acknowledge that the award I am making here is different to the award I have made in other complaints Mr S has brought to the Financial Ombudsman Service. That is because the circumstances that led to this complaint are unique. I agree that there are similarities with the other complaints, but I am required to reach an outcome that I believe to be fair and reasonable in this individual complaint – and that is what I have done.

I also acknowledge that NatWest strongly disagrees with me, but I remain satisfied that it did not make its requirements clear to Mr S. At the time I issued my provisional decision, I was unable to work out what NatWest's requirements were or how Mr S could comply with them. I appreciate that NatWest has since provided me with an additional explanation, but I cannot say that NatWest has been clear throughout.

As I've said, I acknowledge that it isn't always possible for a bank to ask all of its questions upfront. I appreciate that sometimes a customer's answers will quite reasonably prompt further questions. But I still consider that NatWest's information gathering here was unusually protracted.

I am surprised by NatWest's apparent inability to issue an ad-hoc letter to the trustees. It is clearly able to write to me, and I do not understand why it could not send a similar email to the trustees. I note that NatWest wanted a significant amount of information from a care home manager, and I think Mr S's desire to have NatWest's request in writing – presumably to he could pass NatWest's letter on to the care home manager – was entirely reasonable. However, given the beneficiary's death, it will no longer be possible for Mr S to comply with NatWest's previous request. I am sure that it will have alternative requirements, but it is in no-one's interests for this dispute to be further prolonged and so I am issuing this final decision now.

It appears that the trustees of Trust L no longer need to keep its bank account over the longer term. They need access to the account for the purpose of winding up the trust, and they need to be able to arrange final payments to the trust's beneficiaries, but they will not need to keep the account open indefinitely. However, I remain satisfied that in the specific circumstances of this complaint it is fair and reasonable for me to order NatWest to put its information request to Mr S in writing.

I acknowledge that NatWest may later have further questions, and that Mr S may have further complaints. However, there is nothing I can do now that will guarantee that Mr S and NatWest have no further disagreements about its Know Your Customer procedures. If Mr S does have a future complaint, it will be open to him to make that complaint to NatWest and



then to our service. I cannot prejudge what the outcome of that complaint will be (or even if it will fall within our jurisdiction).

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 do not have the power to make an award to the beneficiary for distress they have suffered. 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.

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 L 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 £400 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 still consider that the fair and reasonable outcome to this complaint is for NatWest to pay the trustees £400 for the inconvenience they have suffered. In saying that, I have in mind the reasons I gave in my provisional decision. In addition:

- I have no reason to doubt NatWest's statement that it has followed its own process throughout. But my role is not to assess whether a bank has followed its own process; my role is to reach an outcome that I believe is fair and reasonable in the circumstances of the complaint.
- I consider that the customer service NatWest has provided to the trustees has been poor. I do not criticise it for its decision to carry out its Know Your Customer (KYC) review, but I think it could have been clearer earlier about the information it needed. I consider that NatWest caused the trustees to suffer both confusion and avoidable distress, and it is fair for it to make a payment to compensate them in that regard.

- I now acknowledge that NatWest did in fact apply restrictions to this account. But in these specific circumstances, I don't think those restrictions materially added to the distress or inconvenience suffered by the trustees. I understand there is no longer a need for the trustees to make regular payments from Trust L's bank account, and instead they will be arranging to wind the trust up.

In addition, I direct NatWest to write to Mr S within one month of his acceptance of this final decision to set out what it now needs in order to allow him full access to the account. NatWest should also provide him with a named contact and address to send that information to. It should then give him a reasonable time – at least one month – to comply with its request. In the meantime, it should not use the fact that information from the KYC review is outstanding as a reason to close Trust L's account.

### **My final decision**

My final decision is that I order National Westminster Bank Plc to pay the trustees £400.

In addition, I direct NatWest to write to Mr S as set out above, to tell him what information it needs to allow the trustees to operate the account.

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

Laura Colman  
**Ombudsman**