

The complaint

The trustees of a trust, which I will call Trust A, 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 A'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 A 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 A'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 A'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 A 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 A, 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 A.
- Shortly after the 2021 complaints were resolved, NatWest requested further evidence from the trustees. It told us it did not receive the information it requested within the time limits it gave, so it prevented Trust A's trustees from making withdrawals from the trust bank account. That meant the trustees could not make payments to the beneficiary of Trust A.
- In March 2022, Mr S made further complaints (which I will refer to collectively as the 2022 complaints). This complaint about Trust A is one of the 2022 complaints. Mr S explained that the beneficiary of Trust A was terminally ill, so it was particularly

important that her payments were uninterrupted.

- 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 A, 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 A'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 A fairly.
- To put the matter right, NatWest should pay the trustees of Trust A £750.
- Nat West 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 prejudge 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.

I recognise that the limits on my powers are not particularly helpful to Mr S. From my perspective, it appears there is a cycle developing in which there is some contact between Mr S and the bank regarding the bank's regulatory responsibilities, confusion ensues, and he subsequently makes a complaint. Regardless of whether the confusion is the fault of Mr S or the bank, I don't think that situation is satisfactory for anyone.

It seems to me that Mr S's dissatisfaction with the bank is longstanding – and I do not think his concerns are likely to be resolved by any order that I might make in relation to the complaint in front of me now. I note he has suggested it make be necessary for him to issue some form of court proceedings in relation to Trust A if *“the Bank is going to insist that the Trustees must follow its totally inadequate process so that the Trustees will never be able to access the account”*. I ask NatWest to consider whether there is anything it can do to reduce the likelihood that Mr S will feel the need to take court action.

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 for requests for information that he says it has already been given and then misplaced.

Mr S told us about a frustrating conversation he had with the bank in May 2022. He'd thought that the purpose of the call was to help him resolve all outstanding issues which might prevent the trustees' access to Trust A's bank account, but that turned out not to be the case.

Trust A's assets are invested with another firm, and in July 2022 that firm asked Mr S whether the bank account details for Trust A had changed. They had not – but

NatWest had refused to accept a payment from the investment firm on the grounds that it did not have all the information it needed from the trustees of Trust A. After contact with both Mr S and our service, and an explanation that the beneficiary of Trust A was terminally ill, NatWest temporarily removed the “no operation” marker on Trust A’s account.

Later in July 2022, Mr S told us that after another conversation with NatWest’s staff he believed he now understood what NatWest wanted him to do. But NatWest continued to send requests for information that Mr S says he has already provided.

In these circumstances, where there is a discrepancy between the evidence provided by Mr S and the evidence provided by NatWest, I find Mr S’s version of events more persuasive. That means I am satisfied that he and his fellow trustees did provide 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.

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 A’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 also note that NatWest told us at the beginning of February 2023 that it intended to apply a further restriction to Trust A’s account soon because it does not have identity verification documents for a Ms W, one of the beneficiaries of Trust A. The bank suggested that she use HooYu to verify her identity, which suggests to me that it has not properly updated its records in respect of Ms W. Mr S told both our service and the bank that Ms W died in September 2022. I am satisfied that Mr S has already provided NatWest with a copy of Ms W’s death certificate, so unless the bank has misplaced that certificate, I do not understand what more it needs in respect of Ms W.

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 A 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, and regardless of whether the lack is entirely NatWest's own fault, 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 A's trustees accepting my final decision, NatWest should write to the trustees setting out precisely what information it needs in respect of Trust A, and giving them a named contact and address to send that information to.
- Trust A'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 A'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 £750. I know that is much less than Mr S believes is fair, and much more than NatWest has offered. But in reaching that figure, I have in mind:

- Trust A'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 A'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 (wrongly) believed NatWest had resolved the issue it had with its records.
- NatWest's errors caused delays to income payments to a vulnerable beneficiary.
- 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 NatWest has not been updating its records properly. 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 A 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 A'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 findings.

NatWest said:

- It does not agree that £750 represents fair compensation.
- Mr S has previously said that he is not willing to co-operate further with NatWest. He has therefore not mitigated his risk in this regard.
- Following its contact with our service on 15 July 2022, it realised that Mr S had entered his firm's address as his residential address in its portal. That was not a bank error. After rectifying the address it has been able to electronically verify Mr S's identity.
- Mr S did not tell its KYC team that Ms W had died. Ms W's son notified the bank in relation to Ms W's personal accounts, but the personal customer bereavement team would not have known to pass that information to the KYC team. That was the trustees' responsibility, and they have never done so. However, NatWest's complaint handler has now passed a copy of the death certificate to its KYC team so it no longer requires the trustees to provide that document.
- However, it still needs "*clarity on the nature of the business and how the trust makes its money*", and it strongly encourages Mr S to co-operate with its KYC team.

Briefly, Mr S said:

- He has recently received yet another letter from NatWest asking him to log into its portal and complete one of three actions that might be set out there. Yet again he does not have online access to Trust A's bank account.
- He is not IT literate, and given his previous difficulties he is not prepared to use NatWest's portal again. In addition, he is not prepared to allow anyone else from his firm to use the portal.
- He is now suffering significant distress from what he describes as "*constant bombardment*" from NatWest, to the point that it is affecting his personal life.

- An award of £750 does not properly factor in the level of distress and inconvenience NatWest caused, nor does it provide compensation for lack of access to trust's bank account. It is also different to, and inconsistent with, the awards I suggested in the rest of the 2022 complaints.
- NatWest continued to levy monthly charges whilst providing poor service, and those charges should be refunded.
- Nobody has explained why it is necessary for him to provide his identity evidence separately in respect of each of the four trusts.
- He considers that I have the power to award compensation both to him and to the beneficiary, and he believes I should do so.
- He reminded me that I have discretion to make an award for costs where I believe it is fair to do so, and he considers that I should make such an award in this case.
- He considers that NatWest has breached the rules in the Banking Conduct of Business Sourcebook (BCOBS) and the Payment Services Regulations (PSRs). The BCOBS breach is actionable under the Financial Services and Markets Act 2000.

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

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 A fairly.
- To put the matter right, NatWest should pay the trustees of Trust A £750.
- 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.

When I issued my February 2023 provisional decision, I thought Mr S had told both us and the bank that Ms W had died. He had certainly told us, but I am sorry to say that we don't appear to have passed that information on to the bank.

I haven't asked Mr S for evidence that he told the bank about Ms W's death. That is partly because I don't want to delay this long running complaint any further, but it is primarily because I don't think that issue makes a material difference to the outcome of the complaint.

Regardless of whether NatWest knew of Ms W's death, I can see from the KYC team's records that that team knew in May 2022 that Ms W was terminally ill with a prognosis of three to six months. There is a note to say "*it will not be appropriate to ask id copies for her*". It is not clear from the records whether it was Mr S or NatWest who concluded that it would be inappropriate to ask for identity evidence. But what is clear is the KYC team itself was aware of Ms W's illness. In the circumstances, and given the bank's previous actions with respect to Ms W, I think the HooYu request was inappropriate even if the bank did not know of her death.

I acknowledge that NatWest would like Mr S to provide "*clarity on the nature of the business and how the trust makes its money*", but he has consistently said that the trust is not a business. He is therefore not going to be able to provide clarity on the nature of the business it undertakes. However, I see nothing to prevent Mr S from answering the second part of NatWest's question. If, for example, the trust receives dividend income – or indeed income from any other source – he should be able to provide relevant evidence to NatWest. For the reasons given in my provisional decision, I still think it would be fair for NatWest to provide Mr S with a named contact and an address to send that information to.

Some of NatWest's notes suggest that it now needs to know who has replaced Ms W as the beneficiary of Trust A. As I understand it, nobody has replaced her. She was the life tenant of the trust, and following her death its assets will need to be distributed to the remaindermen. But again, I consider Mr S should be able to provide an explanation to NatWest.

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 know Mr S believes I have the power to make an award to the beneficiary for distress that he has suffered, but Mr S 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 A 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 £750 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

I still consider that the fair and reasonable outcome to this complaint is for NatWest to pay the trustees £750 for the inconvenience they have suffered. In saying that, I have in mind the comments I made in my provisional decision. In addition:

- Given the difficulties Mr S has experienced, I understand why he is reluctant to use NatWest's portal. But NatWest is entitled to carry out its KYC exercise, and it has given him an alternative way to contact it. Ultimately, I consider it that is fair for NatWest to require him to co-operate with its KYC exercise in order to access Trust A's money.
- I acknowledge that NatWest considers that it set out its requirements clearly. But I do not agree. As I said in my provisional decision, at that time I could not work out what NatWest wanted from the trustees. That means I don't think NatWest had explained itself clearly.
- Looking at everything that happened, and applying my own judgement, my opinion is that a payment of £750 represents fair compensation for the distress and inconvenience suffered by the trustees.

Within one month of the trustees' acceptance of this final decision, NatWest should also provide Mr S with a named contact and give him an address to send the information it requires about *"how the trust makes its money"*.

My final decision

My final decision is that I order National Westminster Bank Plc to pay the trustees £750.

In addition, I direct NatWest to write to the trustees as set out above.

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

Laura Colman
Ombudsman