

The complaint

The trustees of a trust, which I will call Trust T, 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 National Westminster Bank Plc's processes are not fit for purpose in respect of trust bank accounts. Specifically, he complains that NatWest wrongly placed restrictions on Trust T'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 T 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 T'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 T'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 T 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 T, 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 T.
- 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 T's trustees from making withdrawals from the trust bank account. That meant the trustees could not make payments to the beneficiary of Trust T.
- In March 2022, Mr S made further complaints (which I will refer to collectively as the

2022 complaints). This complaint about Trust T is one of the 2022 complaints. Mr S explained that the beneficiary of Trust T 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 T, 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 T'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 T fairly.
- To put the matter right, NatWest should pay the trustees of Trust T £900.
- 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.

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 T 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.

There are discrepancies between the evidence NatWest has provided to me and the evidence Mr S has given me. Those discrepancies relate to whether T's trustees did or did not provide various pieces of information to NatWest.

I consider that the evidence Mr S has provided is internally consistent. By that, I mean I haven't seen any examples of him contradicting himself, or retracting a statement he has previously made. Overall, he appears to be a meticulous individual who is trying his best to assist me.

However, I do have some concerns about NatWest's record keeping in respect of Trust T. For example, I note:

- Mr S's 2021 complaint about Trust T was in part about his difficulties in removing a previous trustee, a Mr H, from the mandate for the trust's bank account after Mr H's retirement from the trust.
- Mr S accepted compensation in respect of the 2021 complaint, and it appears that both he and NatWest believed at that point that NatWest's records in respect of Trust T were correct.
- Very soon after the 2021 complaint was resolved, NatWest began writing to Mr H asking him for information about Trust T. Mr S received those letters, and attempted to answer NatWest's questions. But Mr S's attempts were not successful, and NatWest restricted the trustees' access to Trust T's bank account. The impact of that restriction was a disruption in payments to one of Trust T's beneficiaries. I can see that Mr S had told NatWest several times that the beneficiary was terminally ill, and that it was important that her payments were not interrupted.
- In May 2022, NatWest apologised for sending letters to Mr H and offered the trustees' £550 compensation as a result (some of which it intended as compensation for the beneficiary). It acknowledged in May 2022 that it knew Mr H had retired as a trustee.
- Despite its apology, it then sent several further letters to Mr H requesting that he provide more information about Trust T. Mr S has suggested that this implies NatWest had not in fact updated its records, despite its promise to do so. I am unable to think of an alternative explanation, but if NatWest would like to provide one I am of course very happy to consider it.

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 trustee 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 T'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.

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 T 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 T's trustees accepting my final decision, NatWest should write to the trustees setting out precisely what information it needs in respect of Trust T, and giving them a named contact and address to send that information to.
- T'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 T'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 **£900**. 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:

- T'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 T'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.
- In this case, NatWest realised on 11 May 2022 that it had made a mistake with its information requests to Trust T. It acknowledged that it had been writing to a Mr H to ask for further information – and yet it knew (as a result of the previous complaint) that Mr H was no longer a trustee of T. Given that Mr S sent the bank a copy of Mr H's death certificate in March 2021, I consider that the bank ought to have known in May 2022 that Mr H had died.
- NatWest apologised and offered the trustees £550 compensation in respect of its errors in writing to Mr H. I think that offer was fair at the time it was made, and that it does represent fair compensation for the errors NatWest had made at that point.
- However, despite its apology, NatWest continued writing to Mr H about Trust T. After making its offer and acknowledging that Mr H was not associated with the trust, it then wrote to Mr H several more times – at least once a month (and sometimes more often) for the next three months.
- I don't think NatWest's errors in writing to Mr H made a practical difference. Mr S did receive the correspondence intended for T's trustees, and he was able to act on it. But I think the bank's repeated letters to Mr S's deceased former colleague would have caused Mr S entirely avoidable distress, and he should be compensated for that.
- NatWest made a manual intervention to ensure that the beneficiary's payments continued after May 2022 even though it did not all the information it needed. So I don't think the bank's errors after that point caused any further loss to the 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 (particularly in respect of Mr H) 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 T 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 T'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 acknowledges that I said I was persuaded by Mr S's version of events. However, it has not seen any evidence to suggest that the trust deed was uploaded to its portal before 16 May 2022. If there is any evidence on that point, it would like that evidence to be shared.
- In addition, "on 14th July [2022] we wrote to the customer to confirm we needed [a specific form] to be completed and provided a copy of the form with the letter." (I note that this letter was in fact sent to Mr H, at a time when the bank knew Mr H had died.) NatWest went on to say "*The customer supplied this on 1st August and the review was completed on 5th September 2022 with no further outstanding requirements*".
- It does not know why Mr S says his account access is restricted. Its position is that he has full access to Trust T's account, and the KYC review is complete. If he does have any access issues, they are not in any way related to this complaint and he will need to raise a new complaint about a new issue.
- Its customer portal and FAQ are very clear on all of its requirements, and when a document is outstanding it will have a cross beside it (rather than a tick if it has been provided).
- It acknowledges that it wrote to a deceased individual after issuing its final response, and it agrees that further compensation is appropriate. But it considers that the additional compensation should reflect minimal inconvenience.
- Overall, it expects that I will significantly reduce the award I proposed unless Mr S is able to supply "*evidence to back up his version of events to show the correct (and correctly certified) documents were already previously supplied*".

In summary, Mr S said:

- My proposed award of £900 is different to – and inconsistent with – the awards I proposed in the three other trust cases he brought to our service.
- 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.
- An award of £900 would not properly factor in the level of distress and inconvenience

suffered, nor does it compensate for being out of the money. He does not believe that it would represent fair and reasonable compensation in all the circumstances of the complaint.

- 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 exceeded £5,000 (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.
- 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.

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 September 2022. I thought the review was still ongoing and that the trustees would 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 T. 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 acknowledge that Mr S has said he is still unable to access Trust T's account online. But I am satisfied with the evidence NatWest has provided in that respect, and I am further satisfied that any difficulties he is experiencing with Trust T are not related to this complaint. That means I cannot consider them in this final decision. It is of course open to Mr S to make another complaint about those issues. I can understand why he might be reluctant to do that, and I know he was frustrated by the necessity of raising new complaints following the 2021 complaints. But I simply have no power to consider additional issues as part of this decision.

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 £650 for the inconvenience they have suffered.

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 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 am aware that Mr S I have the power to make an award to the beneficiary for distress that she 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, 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 T 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 £650 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 £650 for the inconvenience they have suffered. In saying that, I have in mind the comments I made in my provisional decision. In addition:

- The trustees are not required to submit any further information with respect to NatWest's KYC exercise for Trust T, and so it would not be appropriate for me to order NatWest to pay compensation for the further inconvenience doing so would have caused.

- However, I still think NatWest has made errors, and that the KYC process was unnecessarily protracted. It repeatedly wrote to Mr H, and continued to do so even after it had apologised for the previous letters it had sent to him.
- Looking at everything that happened, and applying my own judgement, my opinion is that a payment of £650 represents fair compensation for the distress and inconvenience suffered by the trustees.

My final decision

My final decision is that National Westminster Bank Plc must pay Trust T's trustees £650 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Trust T to accept or reject my decision before 25 August 2023.

Laura Colman
Ombudsman