

The complaint

Mr and Mrs C complain that when reinvesting funds held in a trust account with Nationwide Building Society (“Nationwide”) it failed to make them aware the new bond they were investing in couldn’t be held in trust resulting in financial loss.

What happened

Mr C was awarded money from a previous employer and was advised by solicitors to set up and put the funds into a trust (“G”) which he did with another provider in 2008. On 23 July 2013 Mr and Mrs C opened a trust account with Nationwide in G’s name, deposited the trust funds into it and invested the funds in a two-year fixed rate bond. Nationwide have confirmed that Mr and Mrs C were the named Trustees of G, and the account was set up so that all trustees were required to sign to withdraw funds or close the account.

Until 22 October 2022 on the maturity of a bond G’s funds were reinvested in another on each occasion and continued to be held in G’s trust account.

Nationwide have explained that the key difference between a trust account and a joint account with it is that with a trust account the trustees are responsible for managing the money of a named beneficiary who the money is held for the benefit of – in this case Mr C. Whereas a joint account that is not in trust is managed for the benefit of both account holders.

In September 2022 Mr and Mrs C received a letter confirming that the bond was maturing and providing options going forward including reinvesting or investing in other bonds that may better suit their needs. The letter makes no mention that Mr and Mrs C can’t again reinvest the funds in a bond held in trust.

As the G trust funds were now sitting in a holding account earning little interest Mr and Mrs C visited a branch of Nationwide in October to seek advice about reinvesting. Mr C says he was told that the best interest rates were offered on the two-year fixed rate bond, but it had to be opened online. Not being very computer literate Mr C wasn’t able to do this himself, but the Nationwide staff member advised that it could be done for him, but as it was too late to do it that day, it was agreed Mr and Mrs C would come in the following day – where a different member of staff would be given advance warning of their visit.

Mr C says they attended the branch the next day and spoke with the staff member who knew all about what was needed. Mr C says he handed the staff member his phone and they proceeded with the investment. Mr C says he made it clear that he was in receipt of benefits and that the bond had to be held in trust and was never told this wasn’t the case. He says he was told that “if it’s in trust now it still will be when this is opened”. It wasn’t possible to complete the application because Mr C’s number needed to be registered and so it was agreed that Mr and Mrs C return on 24 October once this was done.

Mr and Mrs C returned and say after some discussion with a manager the same staff member completed the application using Mr C’s phone and the branch computer and G’s trust account was closed and a new joint account was opened in Mr and Mrs C’s name’s (not

G's trust) and £22,000 was invested in the two-year fixed rate bond and the remainder paid to Mr C by cheque.

Mr C is the receiver of benefits and in May 2023 received correspondence asking if he had received any money from a trust or charity as certain trust payments are not taken into account for benefit purposes. Mr C confirmed this was the case as it had always been but feeling something was wrong got in contact with Nationwide to confirm the funds were still held in trust. Mr C says he was told only then that when the bond was opened on 24 October 2022 with it wasn't held in trust but rather in the joint names of Mr and Mrs C. At which point Mr C raised a complaint.

Mr and Mrs C closed the account with Nationwide and moved the funds back into a trust account with a previous provider they'd used.

Mr C says Nationwide called him on 2 June 2023 and said it would accept liability and asked if he was willing to accept £200 compensation. Mr C says he declined this, as he wanted Nationwide to contact the relevant benefits department and have his name cleared. Nationwide's notes show that initially it believed there had been an error on its behalf and that Mr and Mrs C should've been told that the account would have to stay as it is to remain a trust, and that Nationwide offered to provide a final response letter acknowledging its error that could be given to the benefits department. This is also discussed in a phone call on 1 June between Mr C and Nationwide's complaint handler.

But on further investigation Nationwide decided to take a different stance and issued its final response on 7 July 2023 not upholding the complaint. Nationwide said after talking with the staff members involved, they confirmed the account was opened on Mr C's device but said that there was no discussion regarding a trust remaining on the account.

Nationwide says it didn't do anything wrong, it says it received a clear instruction to close the trust and move the funds into a two-year fixed rate bond and during the online process Mr C would've had to view the summary box and accept the terms and conditions of the account on his device which included "You cannot open this account in trust for the benefit of another person".

Mr and Mrs C were dissatisfied with this and brought their complaint to this service. Mr and Mrs C say that they've had bonds held within the G trust account since it was opened until October 2022 and so it's reasonable that Nationwide ought to have been aware of their needs.

Nationwide says it stopped offering bonds held in trust in 2020 but that customers who have products held in trust prior to its policy change can maintain this set up if there's no request for change. Nationwide says it wrote to all its customers about this, but that Mr and Mrs C weren't mailed until March 2023 by which time G's trust account had already been closed and the proceeds of £22,000 reinvested into another bond not held in trust.

Our investigator looked into Mr and Mrs C's concerns but due to the time that has passed and not having first hand evidence, they weren't able say definitely what had happened when Mr and Mrs C reinvested the trust funds in the bond. But they thought given Nationwide no longer offered products held in trust that it was unlikely that it would provide advice about this – especially as it was a non-advised sale - and that it was reasonable to say that Nationwide had adhered to Mr C's instructions to open a 2-year fixed rate bond. Furthermore, they didn't think Nationwide had done anything to indicate that the bond would be held in a trust wrapper or that Mr and Mrs C had asked for this.

Mr and Mrs disagreed and asked for an ombudsman's decision.

I issued my provisional decision on 2 July 2024. In my provisional decision, I explained why I was proposing to uphold Mr and Mrs C's complaint. I invited both parties to let me have any further submissions before I reached a final decision. Nationwide have accepted my decision and Mr and Mrs C, although they agree with my findings that Nationwide made an error, didn't wish to accept my decision as Mr C would still be left out of pocket regarding the repayment of any benefits.

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.

In my provisional decision I said that:

"In the background I've provided a detailed account compiled of both party's evidence of the events leading up to Mr and Mrs C's complaint. I think this level of detail is important in circumstances such as this where there is a dispute about what happened, and I've had to base my decision on what I think's more likely to have happened in light of the evidence.

The crux of Mr and Mrs C's complaint is that funds which were held in G's trust account and needed to remain so, were reinvested in a newly opened account in their joint names rather than in the name of the trust and that Nationwide failed to make them sufficiently aware of this or that the bond could no longer be held in trust. As a result of this the funds have lost the protection of the trust wrapper and Mr C is potentially liable to the repayment of his benefits.

After considering everything carefully I currently think there has been a failing on Nationwide's part - I don't think Nationwide provided Mr and Mrs C with enough information when reinvesting G's trust account funds into a bond to understand that the funds would no longer be held in G's trust account – but rather a joint account.

Nationwide say that there was no discussion about the trust account remaining open and that Mr and Mrs C would've had to view the summary box and accept the terms and conditions of the account on Mr C's device which included "You cannot open this account in trust for the benefit of another person".

Mr and Mrs C say they made it clear that the funds needed to remain in trust, and they never saw the summary box or terms and conditions of the account because Nationwide's staff member did the application for them on Mr C's phone and a computer at the branch.

Nationwide don't dispute that its staff assisted and guided them with the online application in branch on Mr C's phone but say they wouldn't have touched the phone and that they would've told Mr and Mrs C to read the details before confirming and accepting the terms and conditions. Though the Nationwide staff member who assisted Mr and Mrs C has acknowledged in her statement that as the terms and conditions are a lengthy document the majority of its members simply scroll through them, and they can view them later when they read the email they receive from Nationwide confirming the account is open.

I can't say what was discussed at the time but given the level of detail Mr and Mrs C have provided about what happened and the difficulties Nationwide staff have acknowledged in recalling events that happened months earlier, I'm more persuaded by Mr and Mrs C's recollection of events.

I think it is likely Mr C - as he says - wasn't computer literate and that due to this Nationwide's staff agreed to assist him with the reinvestment of the funds online using his phone. Otherwise, I don't see why Mr and Mrs C would've made three separate visits to Nationwide's branch – it's not convenient and presumably if able, one would much rather conduct this administration from the comfort of one's home.

And given the initial enquiry and subsequent reinvestment transaction took place over three separate visits - where from my understanding the process for doing this turned out more complicated than first thought - I think it is likely at some point Mr and Mrs C would've mentioned the trust and the need for it - especially given how important it was for the funds to remain in trust.

The staff member who served Mr and Mrs C says she knew nothing about trust accounts and would've asked her manager if mentioned. Mr and Mrs C say on the third visit the staff member did consult and have a discussion with a manager regarding the application, so I think it is likely that G's trust was talked about, but the staff member hadn't understood the product.

But even if it wasn't mentioned, I don't think this matters, as although Nationwide's staff were not giving advice on what product to invest in, I think its staff should've noticed that the trust account was being closed and the funds were being invested in a bond that couldn't be held in trust. The name of the account in G's name would've been right there to see when the new account was being funded and the trust account closed.

Given one type of account was being closed (the trust account) and another opened (a joint account) with a different name and structure, and funds being moved across, I don't think it is enough to say Mr and Mrs C's knew what was happening as it was on the summary box when the account opened that you cannot open this account in trust for the benefit of another person and that Mr and Mrs C would've seen this. Especially considering Nationwide's staff member was assisting and guiding them in setting up the application. I think if Mr and Mrs C had seen or understood this they wouldn't have invested in this product as it didn't suit their needs.

I also question why it was possible for G's trust account to be closed by one trustee – Mr C – when Nationwide have confirmed that the account was set up so that all trustees were required to sign to withdraw funds or close the account. I accept the terms and conditions of the new joint account allowed both account holders to open, close or transact on the account – but this wasn't the case for the trust account and despite asking Nationwide on two separate occasions for the terms and conditions of the trust account it hasn't been able to provide this.

Nationwide say it stopped offering bonds held in a trust in 2020. But when I questioned whether it had communicated this to Mr and Mrs C it acknowledged that it didn't write to Mr and Mrs C until after they'd reinvested. So Mr and Mrs C had no prior knowledge that they could no longer continue as they had done for almost 10 years and reinvest the trust funds in the bonds Nationwide had on offer.

So I think Nationwide failed to provide Mr and Mrs C with the clear information they needed to make an informed decision about the reinvestment of the trust account funds – that the bond they wanted to invest in couldn't be held in trust. This has resulted in Mr and Mrs C ending up with a joint account where they are the beneficiaries rather than a trust account where they were holding the funds for the benefit of someone else and Mr C having his benefit entitlement cut.

Mr and Mrs C want Nationwide to reimburse them for any benefits Mr C has had to pay back. I sympathise with Mr and Mrs C, but as I don't know what the final outcome of this has been financially for them and as I don't know what the benefit department looks at when assessing entitlements or when an entitlement has wrongly been paid - and nor is it something for me to determine - I don't think I can make a finding that Mr C's benefits were cut and he suffered a financial loss as a direct result of Nationwide's mistake. Indeed, it may be the case that Mr C wasn't entitled to the benefits in the first place.

So I don't think that Nationwide should reimburse Mr and Mrs C for any benefits Mr C has had to pay back. If Mr C has wrongly had his benefits cut due to a mistake on Nationwide's part this is something I think the benefits department should correct themselves.

But I do think Nationwide need to compensate Mr and Mrs C for the distress and inconvenience suffered when they discovered G's funds were no longer held in a trust account. I have no doubt this has put Mr and Mrs C under a significant amount of stress and has been an administrative burden. They have had their integrity questioned and have been left in doubt about their future financially. Mr and Mrs C have had to correspond with different organisations about what happened, seek assistance, close their account and move G's funds to another provider. They had to raise a complaint with Nationwide regarding this and ultimately, bring their complaint to this service.

And so bearing all this in mind, I currently think Nationwide should compensate Mr and Mrs C £750 for the distress and administrative inconvenience suffered."

I appreciate Mr C may still be left in a position where he has to repay benefits and I do sympathise with him. I hope my decision that it was Nationwide's error regarding the opening of a non-trust account will help Mr C regarding this. But as Mr and Mrs C haven't provided any new evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint.

My final decision

For the reasons I've explained, I uphold Mr and Mrs C's complaint and direct Nationwide Building Society pay the fair compensation outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 23 August 2024.

Caroline Davies
Ombudsman