

## **The complaint**

The estate of Mr T and the brother of the late Mr T (who I will refer to as 'Mr T's brother') have complained that after Mr T sadly passed away, National Westminster Bank Plc ("NatWest") said his joint account and the outstanding balance was the responsibility of the remaining account holder - even though Mr T had separated from the other account holder years ago.

NatWest reduced the overdraft limit during this time, meaning more overdraft charges were applied to the balance.

As a result, the other account holder contacted Mr T's brother, which put him in an awkward situation. Mr T's brother says that the late Mr T's data protection rights were breached, and Mr T's brother paid some of the account fees to prevent further contact with the remaining account holder.

Mr T's brother says he felt stressed, anxious, and upset as he's had to deal with family matters, which he said has been caused by NatWest.

In its response to the complaint, NatWest agreed to pay Mr T's brother £80 to apologise for the distress and inconvenience he has experienced.

## **What happened**

One of our adjudicators assessed the complaint, and they didn't think that NatWest had done anything wrong, and that there had been no data breach.

The estate of Mr T and Mr T's brother disagreed with the adjudicators assessment. So the matter was referred for an ombudsman's decision.

## **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.

Having reviewed everything, I'm unable to say that NatWest has acted unfairly or unreasonably in this matter. I will explain why.

Firstly, before I get into the complaint, having reviewed everything I have to say I feel a great deal of sympathy for the family of the late Mr T in having to deal with such matters. I appreciate that it is difficult enough to deal with the loss of a loved one, but then having to unravel their finances when settling their estate has, in this case, clearly added a great deal more stress to the process.

*Who can we make awards to for distress and inconvenience?*

Having said all of the above, I'm not able to instruct NatWest to pay any compensation to the estate of Mr T or Mr T's brother for this matter. And that is the case even if I thought compensation was warranted.

The reason for this is because, as the adjudicator explained, the eligible complainant in this case is the late Mr T. This means both the brother and mother of the late Mr T are acting in the capacity of representatives for the estate in this complaint.

This is an important distinction to make, because we can only award compensation for any distress and inconvenience (if its warranted) that eligible complainants experience. But we can't generally make any awards of compensation for any distress or inconvenience experienced by a representative of an eligible complainant.

So, although I can see this matter has been stressful for the family of the late Mr T, I wouldn't be able to award compensation for any distress or inconvenience that they have experienced in this matter, as they are not eligible complainants. And, as the events complained about have only come about after Mr T had passed away, I can't reasonably say that the late Mr T suffered any distress or inconvenience concerning the matters that this complaint relate to either.

#### *Joint account*

Having reviewed everything, it's clear that the circumstances of this complaint have come about essentially because the late Mr T and his ex-partner never made the joint account a sole account. And the consequences of this have clearly been exacerbated further by the fact that the late Mr T had divorced the other account holder a number of years back, and the family of Mr T had not been in contact with the other account holder for a number of years.

Mr T's brother says that the account started out as a sole account, in the late Mr T's sole name. I understand why Mr T's brother has said this, but I don't think it changes anything. I say this because, once it was changed to a joint account, the 'new' account holder had exactly the same rights as the 'existing' account holder. In other words, it is largely irrelevant for the purposes of this complaint who held the account first, once it'd become a joint account.

Once the account was changed to being a joint account, that meant that the late Mr T and the other account holder became jointly *and severally* liable for the account. Moreover, as it is a joint account, as per NatWest's account terms and conditions, the rules of survivorship generally apply. This means that if either of the joint account holders die, as sadly happened in this case, the surviving account holder becomes liable for the account.

So in summary, although the estate of Mr T have brought this complaint, as the account was still a joint account when Mr T passed away, that means that the surviving account holder became solely liable for the account and therefore any debt that had accrued on the account. And that is the case, regardless of who built up the debt on the account or the state of the relationship between the two account holders at the time of the account holder passing away.

Mr T's brother has explained that Mr T and his ex-partner did intend to get the account changed to being in Mr T's sole name. However, I understand that only the ex-partner was present at the branch when she made this request. And NatWest, quite reasonably, said that both Mr T and his ex-partner would need to consent to such a change – after all, Mr T would've been made fully liable for the account had it been changed into his sole name. But from what I have seen, Mr T never provide his consent to the account being changed to a sole account. Therefore, I can't reasonably say that NatWest has acted unfairly or unreasonably because the account remained as a joint account when Mr T sadly passed away.

In this case, I appreciate that the estate of Mr T has agreed to cover the other account holder's costs to repay the debt that had accrued on her account. But ultimately the decision to do that is a civil matter between the estate of Mr T and the other account holder. I can't reasonably hold NatWest responsible for their decision to do that.

Furthermore, as the other account holder is not party to this complaint, I can't consider whether NatWest treated them fairly and reasonably, nor can I question whether the balance on the account was correct. Of course, if the other account holder wishes to make a

complaint against NatWest, then we may be able to consider that as a separate complaint. But for these reasons, I'm not able to comment on NatWest's handling of the account in question, or indeed even if the balance that the surviving account holder was left to repay was correct.

#### *Data breach*

Finally, Mr T's brother has complained that NatWest breached data protection laws, because it disclosed the late Mr T's address to the other account holder.

However, I don't think NatWest was being unreasonable if it disclosed to the surviving account holder what address the account was registered to – after all it was her account by that stage and NatWest had been sending her letters about her account to that address.

Furthermore, even if I were to say that NatWest was being unreasonable in disclosing the late Mr T's address to the other account holder – it is the case that the data protection rules only apply to people when they are alive. As such, the disclosure of the late Mr T's address to the other account holder after he'd passed away would not count as a breach of the relevant data protection rules in any event.

As such, whilst I have great deal of sympathy for the predicament that the family of Mr T found themselves in when settling his estate, I'm unable to say that NatWest has acted unfairly or unreasonably in pursuing the surviving account holder for the debt that had accrued on the late Mr T's joint account.

#### **My final decision**

Because of the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr T to accept or reject my decision before 22 August 2023.

Thomas White  
**Ombudsman**