

The complaint

A company I'll refer to as N complains that National Westminster Bank PLC (NatWest) set up the wrong type of account for it, which caused it to have to open a new account and update many of its service users.

To put things right, N wants NatWest to pay £4,169.98, being the sum it says it cost to put things right.

What happened

The background to this complaint is known to both parties, so I won't rehearse the same in detail here. Simply, NatWest has accepted that it opened the wrong type of account for N in 2013. N is legally obliged to maintain the correct account type, so it had to change the account when it found out. And it had to write to its service users to confirm the new account details.

N says that approximately 30 to 40 of N's service users didn't speak English as their first language, so N employed an interpreter on a temporary basis to update those service users. The temporary member of staff signed a six-month contract for 18 hours a week, which cost N £4,169.98.

NatWest declined to pay the costs N claimed, but did offer to pay £1,000. Mr N rejected the offer and brought N's complaint to our service.

Our investigator didn't uphold the complaint. He said NatWest's offer to pay £1,000 was fair and covered the costs N incurred, together with a payment for the inconvenience N experienced as a result of the error.

Mr N didn't agree. He sent in a copy of the spreadsheet he used to monitor the temporary employee that showed the extent of the additional work, together with text messages between the temporary employee and various service users.

I issued my provisional decision on 7 July 2023. In it, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I should start by saying I'm grateful to both parties for the evidence and submissions they've provided. This is a finely balanced case and it turns on the evidence I've seen from both NatWest and Mr N.

Having seen the contract of employment, NatWest didn't accept that the employee had been taken on solely for the purposes of helping N update its bank details/direct debits. It didn't consider a 6-month period to be reasonable to simply update a number of service users with bank details, and it noted N previously employed a similar member of staff and thought the new member of staff might have been a replacement of sorts (i.e. that N would have taken that employee on regardless of NatWest's error).

Finally, it noted the contract of employment included a provision stating the employee shall carry out other administrative duties, which NatWest said showed the employee hadn't solely been taken on to rectify the issues caused by its error.

I approached NatWest to explain that I'd seen evidence that demonstrated the process wasn't a quick fix and did continue for a number of months. And I told it I was satisfied the "other administrative duties" clause was just a catch all to enable N to assign other tasks if necessary, rather than an indication of the primary purpose of the employment.

In response, NatWest questioned whether N had the number of service users it claimed, and whether a sufficient number of them required the services of an interpreter. It pointed to N's bank statements which it said showed N only received 21 credits in the month the account switch happened, and averaged 19 in the months prior to that.

I reviewed N's statements for the year before the switch, which show an average of 25 credits per month in the 5 months before the account switch happened. And the August and September 2021 statements show 28 and 27 payments out at the start of each month, that appear to be mortgage payments.

But I'm not persuaded that the number of payments alone is indicative of the extent of the issue N faced. Several of the payments are too large to represent a single mortgage or rent payment, and Mr N has told our service some of the service users pay cash.

However, ultimately, the exact number of service users N had to update isn't critical to the outcome of this complaint, nor is it critical to establish a certain ratio of non-English speaking service users. What I'm looking to decide is whether or not it was reasonable in the circumstances of this particular case for N to employ a part-time interpreter as a member of staff to help fix the problem NatWest accepts it caused.

While I can't be sure of exactly how many service users N had on the books, I'm satisfied from the evidence I've seen that it was a significant number, and that a significant proportion of those service users required the services of an interpreter. And in any event, updating the bank details appears to have been a greater task than it might sound. I've seen text messages and letters detailing challenges N experienced with some of the service users. That evidence showed some service users avoiding contact, N arranging appointments/site visits and service users missing appointments, as well as a detailed record of the ongoing work undertaken month by month.

Further, N isn't a large-scale operation with multiple employees that could simply be re-assigned to the task of getting all service users to update their bank details. And while N had previously employed a similar employee to carry out tasks like this, that member of staff had left prior to this issue arising. Given the number of service users involved, the additional complication of the language barrier, and the business critical issue of receiving this particular type of income, I'm satisfied N acted reasonably in taking on a new member of staff, and that it did so because of NatWest's error.

Originally, Mr N did suggest NatWest had agreed to pay N's costs, but I'm not persuaded that was the case, and I can see NatWest simply agreed to assess N's claim. But I don't consider that was a significant factor in Mr N's decision to take on a part-time (and temporary) member of staff. The evidence suggests N chose to employ an additional member of staff because it needed to do so, not because it thought it was playing with house money. And the member of staff was employed on a part-time, temporary contract at a low wage (6 months at 18 hours per week for £8.91 per hour), so I'm satisfied N took reasonable steps to mitigate its losses.

And even if I were to accept N exaggerated the number of service users the employee had to deal with, and exaggerated how many didn't speak English, my decision would be the same, because the circumstances of this case are such that I'm satisfied N's actions were reasonable. Although I should make it clear that I'm not saying N did exaggerate the position, I'm simply explaining why my decision would be the same in the event N had exaggerated the numbers.

Finally, I also accept that this issue would have caused N a significant degree of inconvenience. Its director's attention was taken away from his usual duties for an extended period of time in order to seek, employ and monitor an additional member of staff. So, to compensate N for that inconvenience, NatWest should pay N £500.

NatWest did originally offer £1,000 for inconvenience, but I take the view that that offer was made in view of all of the circumstances of the case, and not simply to reflect inconvenience. I.e. it appeared to be a partial acceptance of blame for the costs or at least a gesture of goodwill, factoring in all of the circumstances of the case.

Given I've separated N's consequential losses from the inconvenience caused, £500 is a more appropriate figure in line with our service's usual guidance. And I should add that I can't make an award for the distress Mr N experienced here. NatWest's customer is N, not Mr N. Because N is a limited company, it cannot feel distress. And our service can't award compensation for distress experienced by NatWest's customer's directors or employees personally.

For the avoidance of doubt, my decision on this complaint isn't based on an assumption that NatWest accepted part of the blame at the outset. NatWest has made its position clear to me that it doesn't accept it should be responsible for the costs N claims. And I only make the point to explain why my compensation award for inconvenience in this regard is lower than NatWest's original offer."

I asked both NatWest and N to provide me with any further evidence or submissions they wished me to consider. However, neither party made any further submissions and both NatWest and N accepted my findings.

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.

Because both parties accepted my findings, it follows that my final decision is unchanged from my provisional findings.

My final decision

My final decision is that National Westminster Bank PLC must pay N:

1. £4,169.88 in respect of N's consequential losses; and
2. £500 in respect of the inconvenience NatWest caused N.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 8 August 2023.

Alex Brooke-Smith
Ombudsman