

Travers Smith Phase 2: Key Findings & Recommendations

1. INTRODUCTION

1.1 On 28 July 2023, it was announced that Travers Smith LLP ("**Travers Smith**") had been appointed by NatWest Group plc ("**NWG**" and together with its subsidiaries, "**NatWest Group**") to undertake a thorough and independent review into account closure arrangements at Coutts & Company ("**Coutts**") (the "**Review**").

1.2 The terms of reference for the Review (the "**ToRs**") were published on the same date (28 July 2023). The Review is divided into two phases: the first phase ("**Phase 1**") covers Reviews 1 and 2 (each as defined below); the second phase ("**Phase 2**") covers Review 3 (as defined below).

1.3 As set out in its press release dated 28 July 2023, NatWest Group committed to publishing the key findings and recommendations in relation to each of the Reviews.

Phase 1

1.4 The first review in Phase 1 ("**Review 1**") comprised a review of the decision to close the accounts of the Client.

1.5 The second review in Phase 1 ("**Review 2**") comprised a review of the circumstances surrounding an article published by the BBC on 4 July 2023 in relation to the closure of the Client's accounts and if any leak of confidential customer information or breach of the UK data protection statutory regime (including the UK General Data Protection Regulation ("**UK GDPR**")) occurred.

1.6 On 25 September 2023, Travers Smith delivered their confidential and privileged reports to the NatWest Group Board setting out their conclusions and recommendations in respect of Reviews 1 and 2. These reports were shared with NatWest Group's financial services regulators.¹

1.7 The key findings and recommendations in respect of Review 1 and Review 2 were published on 27 October 2023.

1.8 Shortly before Travers Smith finalised Review 1, the NatWest Group identified certain additional documents that it believed may be relevant to Travers Smith's Review 1 data protection analysis. As a result, in order to take into consideration all relevant facts and documentation and ensure that Travers Smith's analysis was as comprehensive as possible, they did not set out their data protection analysis in the Review 1 report. Their analysis was instead set out in an addendum to the Review 1 report.

¹ Namely the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).

1.9 On 30 November 2023, Travers Smith delivered the confidential and privileged Review 1 data protection analysis to the NatWest Group Board. This analysis was shared with NatWest Group's financial services regulators.

Phase 2

1.10 Phase 2 of the Review comprised a review of Coutts' account closures over the 24-month period prior to 28 July 2023 (the "**Relevant Period**"). This third review ("**Review 3**") required Travers Smith to do the following, informed by the conclusions of Phase 1:

1.10.1 Review the relevant standards that have been applied when recommending the closure of customer accounts at Coutts, including regulatory guidance around Political Exposed Persons ("**PEPs**"), equalities legislation and any other relevant legal / regulatory guidance. This was to be achieved through selecting a sample, which was to include all PEPs, of Coutts customer account closures over the last 24 months, ensuring an appropriate range of characteristics and reasons underpinning the recommended account closure.

1.10.2 Review the selected cases in line with the Phase 1 approach, as follows:

- (a) Identify the Coutts policies and processes in relation to account closures and review how these were applied in each case;
- (b) Review how each case was identified for closure, and the escalation process;
- (c) Review the decisions made, approval thereof, and adequacy of documentation prepared to inform or record the decision (including minutes at various fora); and
- (d) Review the closures process, including the appropriateness of the communication of that decision to the client, the time provided to respond, and the account closure itself.

1.11 On 30 November 2023, Travers Smith delivered their confidential and privileged report to the NatWest Group Board setting out their conclusions and recommendations in respect of Review 3. This report was shared with NatWest Group's financial services regulators.

1.12 Set out below is a summary of Travers Smith's key findings and recommendations in respect of: (i) Review 3; and (ii) the Review 1 data protection analysis.

1.13 It is important to note that, as was the case with Review 1 and Review 2, the views expressed by Travers Smith represent their opinions and recommendations to NWG. They are not the same as a judgment of a court of law or finding of a regulator. Their views are not binding on any person. They do not determine civil or regulatory liability.

1.14 To the extent that Travers Smith refer to any breaches, or potential breaches, of regulatory rules, this reflects their opinion but, importantly, whether there has in fact been a breach of any such rules is ultimately a matter for the relevant regulator, including as to whether

or not to initiate enforcement proceedings. Whilst Travers Smith have considered relevant facts and matters closely, and are subject-matter experts, their review has not afforded Coutts or the NatWest Group the full safeguards which a regulatory enforcement process would provide, including the ability to respond to their findings, to defend against them, and to present mitigating factors. In any event, it is of course always open to the relevant regulator to form a different view based on the relevant facts.

1.15 Where relevant, the standard of proof applied by Travers Smith in reaching their conclusions was that of the balance of probabilities.

2. TRAVERS SMITH'S KEY FINDINGS AND RECOMMENDATIONS IN RESPECT OF REVIEW 3

Account closures at Coutts in the Relevant Period

2.1 NWG identified just over 10,000 customer accounts that were closed in or around the Relevant Period. However, Travers Smith considered that the vast majority of these account closures were not relevant for the purposes of Review 3 (the "**Excluded Exits**"), as they were not bank initiated (for example, it was the customer who instigated the closure or due to the death of a customer) or they related to administrative or record-cleansing exercises undertaken by Coutts (for example, closing inactive or dormant accounts).

2.2 After removing the Excluded Exits, 897 customer account closures were potentially relevant for the purposes of Review 3. Travers Smith selected and conducted a thorough review of 100 of these 897 customer accounts (over 11%), mixed across 12 different categories of exit. Of the 100 accounts, 26 accounts were held by 10 PEPs or PEP associates.² Where the data provided by NWG identified customers that were exited together,³ these customers were treated as one "case". In the course of reviewing the 100 customer accounts (or 81 cases), Travers Smith discounted 16 accounts (16 cases) because they were either Excluded Exits or had insufficient documentation to enable them to make an assessment. For the purposes of Review 3, Travers Smith therefore considered 84 customer account closures, or 65 cases (the "**Review 3 Sample**"). Each of these customer account closures is referred to below as an "**Exit Case**" and together the "**Exit Cases**", and the decision to exit in relation to each Exit Case is referred to as an "**Exit Decision**" and together, the "**Exit Decisions**".

2.3 The Exit Cases included customers who were exited for numerous reasons, including in relation to, or on account of their connection with financial crime, sanctions, high-risk jurisdictions, and non-financial crime. The Review 3 Sample also included customers who were exited for commercial reasons (i.e., where the resources Coutts was required to expend on the customer were greater than the income Coutts derived from the customer) or because they moved to a jurisdiction in which Coutts does not provide services.

² I.e., individuals and entities associated with PEPs. Note that the Review 3 Sample does not include C1 as his account was not closed during the Relevant Period.

³ A decision taken by Coutts to close a customer's account may have extended to the accounts held by the customer's close family members or business associates.

- 2.4 In Travers Smith's view, the Review 3 Sample included an appropriate range of characteristics and reasons underpinning the recommended customer account closure, as required by the Review 3 ToR.

Findings

- 2.5 The findings of Travers Smith's review are summarised below.
- 2.6 In conducting their review, Travers Smith distinguished between: (i) the making of the Exit Decisions; and (ii) the process surrounding the Exit Decisions.

The making of the Exit Decisions

Were the Exit Decisions made in accordance with the relevant bank policies and processes?

- 2.7 The Exit Decisions were typically made at one of three levels: by the private banker (provided the decision was approved by the relevant Managing Director); by Private Banking Triage ("**PB Triage**")⁴; or by the Wealth Businesses Reputational Risk Committee (the "**WRRC**").
- 2.8 Travers Smith consider that in general the Exit Decisions made at all three levels were made in accordance with the relevant bank policies and processes. More particularly, where there was a policy or process which applied to an Exit Decision, or to one of the steps leading to an Exit Decision, Travers Smith do not consider there to have been any material breaches of such policies or processes (e.g., someone deciding to exit a customer where they did not have authority to do so or for an irrational or unreasonable reason).
- 2.9 However, Travers Smith also consider that the policies and processes governing exit decisions could be improved. For instance, there is a lack of written guidance available to decision-makers at the private banker and PB Triage levels which creates risks as regards consistency of decision-making and as regards the future effectiveness of the process at those levels (particularly, in the event of changes in personnel).

Were the Exit Decisions made in accordance with relevant standards?

- 2.10 In Travers Smith's view, the decision-making in relation to the Exit Cases was consistent with relevant standards, including the Equality Act 2010 (the "**EQA**"), the Payment Accounts Regulations 2015 (the "**PARs**") and FCA rules, and was otherwise appropriate. In particular, Travers Smith have found no evidence of discrimination in any of the Exit Cases, including no evidence of a customer's account being escalated for exit, or ultimately being exited, due to their political views or party-political affiliations, or any other protected characteristic.

Was non-alignment with the NatWest Group's Purpose a material factor in any of the Exit Decisions?

⁴ PB Triage is a decision-making forum which conducts a preliminary review of cases with a reputational risk element, including in order to determine whether escalation to the relevant reputational risk committee would be appropriate.

- 2.11** Travers Smith identified one Exit Case where, in their view, the predominant reason for the exit was inconsistency with Purpose (albeit the account did have low economic contribution ("EC")) and another Exit Case where Purpose was a substantial, although not the predominant, reason for the exit (reputational risk and low EC were substantial factors). Both were cases that were escalated to the WRRRC, and neither involved the expression of political views or party-political affiliations. Travers Smith do not consider either of these cases to have involved a breach of the relevant standards.

The process surrounding the Exit Decisions

Was the process surrounding the Exit Decisions in accordance with the relevant bank policies and processes?

- 2.12** There are a number of positive features of Coutts' approach to customer exits. However, Travers Smith consider the processes surrounding exit decisions, including the process by which exit decisions are communicated to customers, to have certain shortcomings.
- 2.13** In relation to the identification and escalation of accounts for a potential exit, there is little in the way of formal procedure or process governing how non-financial crime exits ("**NFC Exits**") must be carried out by staff within Coutts, and Coutts does not appear (save in respect of country exits (e.g., where a customer moves to a jurisdiction in which Coutts does not operate)) to have in place any formalised set of definitions of the various potential bases for exit or any guidance on the threshold that must be met for a customer to be exited on one or more of these bases. There is also a risk of customers exited on account of low EC being treated differently to customers in comparable positions because of a lack of formal, objective guidance on exit factors.
- 2.14** Once an exit decision is made, the execution of the exit decision is carried out by means of a process which is heavily reliant on private bankers accurately and expeditiously completing a largely manual process.
- 2.15** Travers Smith consider that in over half of the Exit Cases there were: (i) deficiencies in the internal exit execution processes (noting that it is unlikely that this impacted customers directly); and (ii) material deficiencies in the content or format of the exit letter or the process by which the Exit Decision and / or exit letter was conveyed to the customer (which may have impacted customers directly).

Was the process surrounding the Exit Decisions in accordance with relevant standards?

- 2.16** In a small number of the Exit Cases (4), Travers Smith consider that by not giving the customer notice of at least 60 days, Coutts potentially breached Regulation 51(4) of the Payment Services Regulations 2017 (the "**PSRs**") (and, for the same reasons, the applicable customer terms and conditions).
- 2.17** In other Exit Cases, the shortcomings in the processes surrounding an Exit Decision being made, including the process by which Exit Decisions were communicated to customers, have caused Travers Smith to identify potential breaches of FCA rules, including the

obligation to treat customers fairly, and potential breaches of contract relating to the failure to provide the customer with the reasons for exit. In particular, Travers Smith:

2.17.1 consider there to be potential breaches by Coutts of Principles 6 (treating customers fairly) and 7 (communications with customers) of the FCA's Principles of Business. These potential breaches relate primarily to failures by Coutts in certain of the Exit Cases to provide the customer with the reasons for the Exit Decision when its policies or processes required it to do so; and

2.17.2 also consider there to be potential breaches by Coutts of a requirement in certain of the applicable terms and conditions that Coutts explain its reasons for closing the account in certain circumstances.

2.18 Set out below is a summary of the potential breaches of applicable regulations and of Coutts' own customer-facing terms and conditions that Travers Smith have identified. They have not identified widespread potential regulatory or contractual breaches. Of the 65 Exit Cases they reviewed, Travers Smith identified one or more potential regulatory breaches in 13 of them (20%);⁵ 2 of these were Exit Cases in which Travers Smith consider there was also a potential breach of a contractual requirement to give reasons to the customer.

	Contractual requirement to give reasons	Regulation 51(4) PSRs (60-day notice of termination)	Principle 6 and related BCBS⁶ rules (Treating customers fairly)	Principle 7 and related BCBS rules (Communications with customers)
Total Exit Cases	2	4	6	7
Percentage of Review 3 Sample	3%	6%	9%	11%

2.19 A summary of Travers Smith's findings in relation to Coutts' compliance with data protection legislation with regard to Review 3 is set out at paragraph 2.30 below.

2.20 Travers Smith found no evidence of direct or indirect discrimination under the EQA, or a breach of Regulation 18 of the PARs, in any of the Exit Cases.

Recommendations

2.21 Travers Smith's recommendations are grouped under six headings:

2.21.1 Formalising the processes for NFC Exits;

⁵ A number of those 13 Exit Cases involved more than one potential breach, which explains why the total number of potential breaches identified in the table is 19 (rather than 13).

⁶ The FCA's Banking: Conduct of Business Sourcebook (BCBS)

- 2.21.2** NFC Exits on account of low EC;
- 2.21.3** Exits of connections;
- 2.21.4** Execution of the decision to exit;
- 2.21.5** Data protection; and
- 2.21.6** Record-keeping.

Formalising the processes for NFC Exits

- 2.22** Travers Smith recommend that Coutts considers putting in place a formal, appropriately detailed process such that it is clear to the decision-makers and staff involved in carrying out NFC Exits what steps they should be undertaking and what standards should be met. Any such process would need to be consistent with the terms and conditions governing the accounts being closed.
- 2.23** As part of the process described at paragraph 2.22 above, Travers Smith also recommend that Coutts considers the introduction of a categorisation system for NFC Exits, together with more guidance on the thresholds or key indicators that must be present for a customer to be exited on a particular basis, as Travers Smith consider that this would provide clarity to those tasked with carrying out NFC Exits and reduce the risk that customers in comparable positions are treated differently. Travers Smith also recommend that this be supported by a governance / approval framework that ensures there are additional checks on whether a proposed NFC Exit is consistent with the relevant definition and that the appropriate reasons for exit are recorded. Once implemented, Coutts should provide training on the categorisation and related guidance to relevant teams and individuals.

NFC Exits on account of low EC

- 2.24** Over half of the Exit Cases involved accounts with a low EC. Travers Smith recommend that, in order to maximise consistency, and therefore fairness, between customers, Coutts should consider implementing a more systematic approach to:
 - 2.24.1** identifying customers with EC levels that are so low over a specified period of time as to merit at least a consideration of whether they ought to be considered for potential exit (such levels may differ depending upon the cost to serve different types of customers); and
 - 2.24.2** assessing whether customers who are identified as being below relevant EC thresholds should be exited, or whether there are other factors present which point towards retention, notwithstanding consistently low EC (for example, the likelihood of the customer's EC increasing in the future).
- 2.25** In addition, Travers Smith reiterate their Review 1 recommendations that:

- 2.25.1** in order to maximise consistency, and therefore fairness, between customers, Coutts should promptly consider the circumstances in which clients being considered for EC-driven commercial exits should be given an opportunity to increase their EC before any exit decision is taken; and
- 2.25.2** a protocol or other guidance document be considered at NatWest Group level regarding the process for considering whether National Westminster Bank plc accounts could be offered to customers being exited from Coutts on commercial grounds.

Exits of Connections

- 2.26** Travers Smith suggest that Coutts considers clarifying and standardising its approach in relation to the identification and consideration of individuals or entities holding Coutts or NatWest Group accounts connected to a customer being considered for exit. Travers Smith consider that putting in place clearer guidance in this regard would ensure that there is an approach that is capable of being applied consistently across cases, which would assist Coutts in discharging its duty to treat customers fairly.

Execution of the decision to exit

- 2.27** The primary source of guidance for private bankers and other frontline personnel responsible for executing customer exits in both NFC Exits and financial crime exits is found in the Coutts Exit Guidance. Travers Smith recommend that the Coutts Exit Guidance could be clearer, better structured and (in some cases) more detailed.
- 2.28** Travers Smith reiterate their recommendation made in the context of Review 1, which takes into account HM Treasury's recently published policy statement which proposes that account providers should provide "*a clear and tailored explanatory reason [for the closure] unless to do so would be unlawful*" (July 2023), that NWG and Coutts should review any relevant policies and procedures regarding whether the reason for the exit decision should be given orally and in writing to the customer in all NFC Exits.
- 2.29** Travers Smith further recommend that Coutts put in place a process which will minimise the risk of errors or omissions being made in relation to the execution of exit decisions. This might be achieved, for example, through training to front-line teams with responsibility for carrying out the exit process on the requirements and practical steps involved in that process, including on the preparation and issuing of exit letters, and / or by adding a process to ensure that all necessary steps as part of the exit process have been completed.

Data protection

- 2.30** In summary, Travers Smith have found that Coutts' data processing in respect of the Exit Decisions was, in most cases, likely to be lawful pursuant to the Data Protection Act 2018 (the "**DPA 2018**") and the UK GDPR. However, in respect of certain NFC Exits (i.e. where the personal data relied upon by Coutts in making the Exit Decision did not relate to financial matters and / or the bank / customer relationship), it appears less obviously

straightforward for Coutts to rely on the legitimate interest lawful basis of processing (Article 6.1(f) UK GDPR). Furthermore, there is no clear and obvious "regulatory requirement" underpinning an entitlement for Coutts to rely on Condition 12, Schedule 1, DPA 2018 when processing criminal offence data relating to a small sub-set of NFC Exits (although Condition 12 provides a fairly broad definition of "regulatory requirement" such that it includes a "requirement forming part of generally accepted principles of good practice relating to a type of body or an activity). Accordingly, in our opinion, it is not completely clear that Coutts' processing of certain crime-related data is compliant with Article 10 UK GDPR. Therefore, in making exit decisions for certain NFC Exits, Travers Smith note that Coutts (and the NatWest Group more generally) should refrain from processing certain personal data, unless it concludes that it has a clear lawful basis to do so.

Record-keeping

- 2.31** There are certain record-keeping requirements in place. However, these requirements have not been complied with in all of the Exit Cases. Therefore, Travers Smith recommend that Coutts considers whether to set minimum requirements or expectations regarding clear, accurate and consistent recording of key exit-related information, communications and documentation in its core client relationship management system, in addition to those that are already prescribed under existing guidance. Travers Smith consider that adequately recording such material may help facilitate the smooth running of the exit process (in particular where support teams other than the private banker need to access exit-related information or there is a change in the private banker during the exit process) and would also make it much easier to review and revisit the key context to, and rationale for, an exit decision should it be necessary to do so at a later date. Travers Smith would recommend in particular that records of exit decisions, exit forms, exit letters or emails, notes of calls with customers communicating the exit decision and details of any complaints received be recorded.

The Review 1 Findings

- 2.32** As explained in the summary of the Review 1 findings and recommendations published on 27 October 2023, Travers Smith made certain caveats in light of the possibility of additional information coming to light as part of Review 3, which might have affected their view on certain matters covered in that report. Ultimately, however, the additional information that Travers Smith considered as part of Review 3 has not caused them to need to revisit any of their Review 1 conclusions or recommendations.

3. TRAVERS SMITH'S KEY FINDINGS IN RESPECT OF THE REVIEW 1 DATA PROTECTION ANALYSIS

Did the NatWest Group comply with those aspects of the UK's data protection statutory regime relevant to the decision to exit the Client (the "Client Exit Decision")?

3.1 Partly. Whilst Travers Smith have seen various instances of the NatWest Group's compliance with those aspects of the UK's data protection statutory regime relevant to the Client Exit Decision (and other exit-related activities), they have also identified certain examples of data protection compliance failures (or likely failures) and/or best practice shortcomings. The majority of these failures (or likely failures) and shortcomings are associated with the data protection principle that personal data must be "processed lawfully, fairly and in a transparent manner in relation to the data subject" (Article 5.1(a) UK GDPR). In particular, Travers Smith have identified likely data protection compliance failures associated with the processing of certain special category personal data under Article 9 UK GDPR, although they note that these likely failures are only relevant in respect of a small sub-set of the Client's political opinion data. In terms of fairness and transparency, Travers Smith have identified failures and shortcomings associated with Articles 13, 14 and 30 UK GDPR.

3.2 The majority of data protection compliance failures (or likely failures) and/or best practice shortcomings which have been identified can be attributed to two general themes: (i) Coutts' (and other NatWest Group entities') reliance on centralised functions and committees as part of a centralised, NatWest Group-wide approach does not appear to have been specifically factored into the relevant data protection compliance processes and procedures; and (ii) the process for exiting customers does not appear to have been specifically considered as part of the relevant data protection compliance processes and procedures.

Travers Smith's recommendations in respect of the Review 1 Data Protection Analysis

3.3 In light of Travers Smith's findings, summarised above, they recommend that Coutts (and the NatWest Group more generally) works through the relevant data protection compliance processes and procedures with these general themes specifically in mind (i.e. to ensure that these themes are appropriately factored into the data protection compliance processes and procedures).