

# Travers Smith Phase 1: 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** The first review in Phase 1 ("**Review 1**") comprised a review of the decision to close the accounts of the Client (the "**Exit Decision**"). In particular, Travers Smith were asked to:

**1.3.1** Review Coutts' policies and processes in relation to customer account closures and how these were applied in relation to the Client;

**1.3.2** Review how the Client's accounts were identified for closure and the steps that led to his case being considered by the Wealth Reputational Risk Committee;

**1.3.3** Review whether those decisions were taken in accordance with the relevant bank policies and processes<sup>1</sup>;

**1.3.4** Review the communication of the decision to the Client; and

**1.3.5** Review the actions and roles of senior executives and the board at each of Coutts and NatWest Group level, including the timing and content of updates they were given.

**1.4** 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 (the "**BBC Article**") and if any leak of confidential customer information or breach of the UK data protection statutory regime (including the UK General Data Protection Regulation ("**GDPR**")) occurred. In particular, Travers Smith were asked to:

**1.4.1** Consider whether any briefings with the media (including the BBC) took place during the relevant times, and whether there was any senior executive involvement in such briefings;

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<sup>1</sup> The ToRs were silent as to whether Travers Smith should be assessing the decisions by reference to relevant standards. Travers Smith took the view that they should be assessing the decisions in this way.

- 1.4.2** Review how the NatWest Group responded to the possibility of confidential information leaving the organisation and the actions that were taken.
- 1.5** Phase 2 of the Review comprises a review of Coutts' account closures over the 24-month period prior to 28 July 2023. This third review ("**Review 3**") will be the subject of a separate report (the "**Review 3 Report**").
- 1.6** NWG agreed with Travers Smith that there would be no limitations or restrictions on Travers Smith's access to materials, information and employees that they considered relevant to the Review. Reviews 1 and 2, which, subject to one caveat relating to Review 3, have now been completed, involved Travers Smith being granted access to a very substantial volume of documentation and conducting a large number of witness interviews within a period of eight weeks.
- 1.7** 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 have been shared with the relevant regulators<sup>2</sup>.
- 1.8** 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. Set out below is a summary of Travers Smith's key findings and recommendations in respect of Review 1 and Review 2.
- 1.9** It is, however, important to note that NatWest Group is constrained by what it can say publicly by reason of: (i) duties of confidentiality owed to the Client; (ii) data protection considerations in relation to the Client and the many individuals interviewed for the purposes of each of Review 1 and Review 2; and (iii) the fact that Travers Smith had no obligation to undertake a process of "Maxwellisation", and, in view of the time available to them, did not do so.
- 1.10** It is also important to note that 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.
- 1.11** 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.

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<sup>2</sup> Namely the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).

**1.12** 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 ARISING OUT OF REVIEW 1 AND REVIEW 2**

### **Review 1**

**2.1** As set out above, NWG agreed with Travers Smith that there would be no limitations or restrictions on Travers Smith's access to materials, information and employees that they considered relevant to the Review. Travers Smith identified and reviewed a substantial volume of contemporaneous documentation for relevant custodians from the period before and after the Exit Decision, and conducted a large number of witness interviews in order to identify the circumstances in which the Exit Decision was made, how the decision was communicated to the Client, and the actions and roles of senior executives and the board at each of Coutts and NatWest Group level. Travers Smith reviewed relevant NatWest Group (including Coutts) policies and considered relevant legal and regulatory principles in order to provide their assessment as to whether, based on the facts as they found them to be, applicable laws and regulatory obligations were complied with. This Section sets out a summary of Travers Smith's key findings and recommendations in respect of Review 1<sup>3</sup>.

#### The Exit Decision<sup>4</sup>

**2.2** The Exit Decision was taken at a Wealth Businesses Reputational Risk Committee ("**WRRC**") meeting in November 2022 and was subsequently approved at NatWest Group level in March 2023.

#### *What was the basis of the Exit Decision?*

**2.3** The Exit Decision followed the completion of a series of internal review and governance processes. However, since the Exit Decision was ultimately taken by the WRRC, Travers Smith took the view that its basis was to be determined by considering the rationale of the WRRC at the November 2022 meeting.

**2.4** Whilst the evidence (documentary and witness) was not entirely consistent, Travers Smith consider that, on balance, it was predominantly a commercial decision. However, in describing it as such, it is important to recognise that there is no universally agreed definition of the term 'commercial', just as there is no universally agreed definition of, for example, the term 'political'.

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<sup>3</sup> Travers Smith's conclusions are based on the facts known to them as at the date of the Review 1 Report. However, they cannot rule out the possibility that further facts may come to light as part of Review 3 that may change, or at least mean they need to revisit, some of their Review 1 conclusions. Most obviously, this is because a major regulatory principle applied in preparing the Review 1 Report is the concept of "treating customers fairly". Whilst it is of course possible to treat a single customer unfairly, unfairness is often most apparent when comparing the way a firm has treated multiple clients in similar positions. It is therefore possible that the wider lens of Review 3 will affect their assessment of the way the Client was treated by Coutts.

<sup>4</sup> Note that the Exit Decision has not been put into effect. As at the date of the Review 1 Report, the Client remained a customer of Coutts.

**2.5** Therefore, what follows below explains what Travers Smith mean by the description of the Exit Decision as being 'predominantly a commercial decision'.

**2.5.1** In their view, the commercial rationale for the decision was clear. Coutts considered its relationship with the Client to be commercially unviable because it was significantly loss-making. This assessment by Coutts was arrived at using metrics which were of general applicability to all politically exposed persons ("PEPs") or high risk ("HR") clients. The fees and other income Coutts generated from its relationship with the Client were considered to be below (by some margin) the costs it (Coutts) was incurring in maintaining the Client's accounts. This disparity between income and cost would be exacerbated when the Client paid off his mortgage. Travers Smith consider these commercial factors to have been at the forefront of the minds of the WRRC members when making the Exit Decision. For the avoidance of doubt, Travers Smith do not consider the Coutts Eligibility Criteria<sup>5</sup> to have been a relevant factor in the Exit Decision.

**2.5.2** In Travers Smith's view, however, there were other factors considered by the WRRC as part of the decision-making process. Foremost among those other factors was the risk Coutts perceived to its reputation in the eyes of its stakeholders<sup>6</sup>, including other customers, staff and investors, on account of being seen to be providing banking services to the Client, given his public statements on issues such as the environment, race, gender and migration. Relatedly, the risk perceived by Coutts included the risk to its reputation of being seen as hypocritical due to the fact that the Client's public statements on those issues were not considered by Coutts to align with NatWest Group's Purpose (Purpose being something the WRRC was required to take into account under its terms of reference) or Coutts' B Corp status. Many people will regard these issues as political issues. In Travers Smith's view, it is only in the context of the perceived reputational risk to Coutts and non-alignment with Purpose described above that the Client's public statements on issues such as the environment, race, gender and migration played any role in the Exit Decision.

**2.5.3** But reputational risk, and non-alignment with Purpose (and any associated reputational risk), were not, in Travers Smith's view, factors that drove the Exit Decision<sup>7</sup>. In particular, they consider it to be highly probable that the Exit Decision would not have been made had Coutts deemed the relationship with the Client to be commercially viable. In arriving at this particular conclusion, Travers Smith recognise that this was not the scenario which was

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<sup>5</sup> In order to open a Coutts account, UK clients are "required to maintain at least £1m in investments or borrowing (mortgage), or £3m in deposits".

<sup>6</sup> The Group Reputational Risk Policy defines reputational risk as: "the risk of damage to stakeholder trust due to negative consequences arising from internal actions or external events".

<sup>7</sup> The Wealth Businesses did not record on its reputational risk register at any stage any reputational risks related to the Client's views or adverse press related to them. The Client only appeared on the Wealth Businesses Reputational Risk Register after the Exit Decision and communication of it to the Client, and the risk registered was related to the potential of the Exit Decision being made public by the Client.

considered by the WRRRC, but based on their assessment of the process, and the evidence, a retention outcome was highly probable, given that none of the adverse press that was considered by the WRRRC indicated conduct on the part of the Client amounting to illegality or potential illegality.

**2.5.4** It follows that Travers Smith do not consider the fact that the Client's public statements on these issues may not have aligned with NatWest Group's Purpose or Coutts' B Corp status to have been a determining factor in the Exit Decision. Rather, they consider them to have supported it.

**2.5.5** For the avoidance of doubt, Travers Smith do not consider there to be any evidence that the Client's pro-Brexit stance, or his party-political affiliations, were factors in the Exit Decision.

**2.6** In terms of their assessment of the Exit Decision as predominantly a commercial decision, Travers Smith drew a distinction between: (a) the process by which the Client's case came to be considered for a possible exit (following a periodic review); and (b) the Exit Decision itself. It is clear that the Client's case was escalated to the WRRRC to be considered for a possible exit due to the perceived reputational risk to Coutts created by being seen to be offering banking services to the Client and potential non-alignment with Purpose. The process was sparked by certain press reports that had come to light in January 2022 relating, primarily, to comments made by the Client regarding the Black Lives Matter movement, and in April 2022, relating to his alleged Russian links. The commerciality of the relationship was not a material factor in this part of the process. However, once the Client's case came to be formally considered by the WRRRC for a possible exit, a holistic assessment of the Client's case had to be, and in Travers Smith's view was, conducted. As described above, in Travers Smith's view, this holistic assessment resulted in a decision which was predominantly a commercial decision.

**2.7** In reaching their conclusion as to the basis of the Exit Decision, Travers Smith took into account the public statement issued by the former NatWest Group CEO on 25 July 2023 in which, in relation to her conversation with a BBC correspondent<sup>8</sup>, she stated (among other things):

*"Alongside this, I repeated what [the Client] had already stated, that the bank saw this as a commercial decision... In response to a general question about eligibility criteria required to bank with Coutts and NatWest I said that guidance on both was publicly available on their websites. In doing so, I recognise that I left [the BBC correspondent] with the impression that the decision to close [the Client]'s accounts was solely a commercial one. I was not part of the decision-making process to exit [the Client]. This decision was made by Coutts, and I was informed in April that this was for commercial reasons. At the time of my conversations with [the BBC correspondent], I was not in receipt of the contents of the Coutts Wealth Reputational Risk Committee materials subsequently released by [the Client]. I have*

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<sup>8</sup> As to which, see the Review 2 section below.

*apologised to [the Client] for the deeply inappropriate language contained in those papers."*

- 2.8** Travers Smith consider that the former NatWest Group CEO's statement could be interpreted to mean that she (and hence NatWest Group) had concluded by 25 July 2023 that the Exit Decision was not made solely on commercial grounds. This statement, which was made eight months or so after the Exit Decision (a decision in relation to which the former NatWest Group CEO played no part) was taken, does not affect Travers Smith's conclusion as to its basis. Indeed, although they consider that the Exit Decision was made predominantly on commercial grounds (and, therefore, was not solely a commercial decision), they consider that the extent to which non-commercial grounds were a factor in the Exit Decision is substantially less than a neutral observer might fairly conclude based solely on a review of the 40-page document provided to the Client by Coutts in July 2023 in response to his first data subject access request (the "**DSAR Response**"). That document contained extracts from the paper that was prepared in advance of the November 2022 WRRC meeting (the "**WRRC Submission**"), which is the WRRC "*materials*" that the former NatWest Group CEO was referring to in her statement. Travers Smith are of the view that the tone of some of the commentary in the WRRC Submission was inappropriate and ill-advised and can see how the material that was provided to, and published by, the Client in July 2023, in particular, the excerpts from the WRRC Submission, would be liable to give the impression that the Exit Decision was made because the Client's views were not aligned with Purpose.
- 2.9** However, the WRRC Submission was a paper that was submitted to the WRRC ahead of the November 2022 meeting; it is not a record of the Exit Decision and its basis – the decision was made by the WRRC following a discussion at the November 2022 meeting. Travers Smith's conclusion that the Exit Decision was made for predominately commercial reasons is based on a thorough review of the documentary and witness evidence.
- 2.10** Given that the Exit Decision was, in their view, predominantly a commercial decision due to the customer relationship not being commercially viable, Travers Smith considered whether Coutts continuing to treat the Client as a PEP where this was not required might have impacted upon the Exit Decision. A customer's classification as a PEP is relevant to the customer's commercial viability as there are increased monitoring costs applicable to Coutts' PEP customers. However, whilst Travers Smith's view was that the decision taken in May 2022 to continue to classify the Client as a PEP was incorrect, firms are required to take a risk-based view of their customers and they have found clear evidence supporting the conclusion that had he been de-classified as a PEP (which was in contemplation in Q1 2022), the Client would have been re-categorised as a non-PEP with a risk profile of "high". The risk categorisation of a particular customer is inevitably a subjective decision based on each firm's risk appetite in relation to the particular customer's characteristics, but the rationale given at the time for re-categorising the Client as high risk was, in Travers Smith's view, rational and reasonable. The screening required of both PEP and HR non-PEP customers would have been broadly similar and so whether the Client was classified as a HR non-PEP customer or PEP, this would have resulted in a broadly similar impact on the costs to Coutts and therefore on the Client's commercial viability. Therefore, while the

Client was in Travers Smith's view incorrectly classified by Coutts as a PEP at the relevant time, they do not consider this to have been a determinative factor in the Exit Decision – on the basis that had he been declassified, he would have been categorised as a HR non-PEP client which would have also increased his costs of monitoring in a comparable manner to him being classified as a PEP.

*Did Coutts have a contractual right to close the Client's accounts?*

**2.11** Yes.

**2.11.1** As regards the relationship between Coutts and the Client, the Private Client Core Terms state: "*We can also close any of your accounts or terminate the Agreement for any other reason on at least 60 days' notice*".

**2.11.2** As regards the relationship between Coutts and the Client's business, the Business Current Account Conditions of Use state: "*We can also close your Account on giving you not less than 60 days' prior notice; or such period of notice as you would have to give us in order to close your Account (or to close it without paying a charge) whichever is longer*".

*Was the Exit Decision made in accordance with the relevant bank policies and processes?*

**2.12** Yes.

*Was the Exit Decision made in accordance with relevant standards?*

**2.13** Yes. In particular, in Travers Smith's view the Exit Decision, based on the grounds set out in paragraphs 2.3 to 2.6 above, did not amount to:

**2.13.1** either direct discrimination or indirect discrimination under the Equality Act 2010;

**2.13.2** direct discrimination or (to the extent relevant) indirect discrimination for the purposes of Regulation 18 of the Payment Accounts Regulations 2015; or

**2.13.3** a breach of applicable FCA rules, in particular Principle 6 (Customers' interests) of the FCA's Principles of Business ("**Principle 6**") and Rule 5.1.1R of the Banking Conduct of Business Sourcebook ("**BCOBS**"), which reinforces Principle 6.

Communication to the Client of the Exit Decision

**2.14** On 14 April 2023, the Client was notified of the Exit Decision by telephone, and, later that day, in writing, through two exit letters (one relating to his personal account, the other relating to his business account).

**2.15** As regards the telephone conversation, the Client asked what the reasons were for the Exit Decision. No adequate reasons were given and reference was simply made to the exit letters that would follow later that day.

**2.16** The two exit letters did not provide any explanation of the reasons for the Exit Decision.

*Was the Exit Decision communicated to the Client in accordance with the relevant bank policies and processes?*

**2.17** No. Since the Client's exit was categorised (correctly) by the Central Exits Team as a Level 3 (Non-Financial Crime) exit, the correct process would have been to use the Coutts Non-Financial Crime Letter Template, which, unlike the Coutts Financial Crime Exit Letter Template actually used (in error), provides for reasons to be given.

**2.18** The Client was told that it was a "commercial exit", but this was not communicated in the exit letters.

*Was the communication to the Client of the Exit Decision in accordance with relevant standards?*

**2.19** Potentially. As set out above, whether there has in fact been a breach of any regulatory rules is ultimately a matter for the relevant regulator, including as to whether or not to initiate enforcement proceedings. The failure to give the Client reasons in the exit letters was, in Travers Smith's view, potentially a breach of Principle 3 (Management and control) ("**Principle 3**"), Principle 6 (Customers' interests) and/or Principle 7 (Communications with clients) ("**Principle 7**") of the FCA's Principles of Business and/or a breach of BCOBS 2.2.1R, 4.1.1R and 5.1.1R (which reinforce Principles 6 and 7). The key reason for this was that Coutts breached its own process of giving reasons to customers in non-financial crime exits who were subject to commercial (as opposed to financial crime) exits. The effect of this was that Coutts treated the Client inconsistently with the standard it has set itself to apply to other customers in the Client's position. This raises a fairness question (under Principle 6 and BCOBS 5.1.1R), an adequacy of communication question (under Principle 7 and BCOBS 2.2.1R and 4.1.1R) and also a question about Coutts' ability to operate effectively its system of providing exit communications to customers (under Principle 3). Additionally, the FCA has previously made reference to BCOBS 4.1.1R as requiring that banks "*provide clear and timely information to customers when closing [accounts]*".<sup>9</sup> Finally, UK Finance's<sup>10</sup> June 2019 Principles for Exiting a Customer (the "**UK Finance Principles**") state that a bank should "*tailor its communications with the customer, including setting out its reasoning clearly, so far as is feasible and permissible*".

**2.20** However, Travers Smith have not put their conclusion any higher than a *potential* breach. In particular this is due to the following statements from the FCA and the Financial Ombudsman Service suggesting that providing reasons for a customer exit may not always be required:

**2.20.1** on 19 September 2023, the FCA published its initial findings into bank account closures in a report entitled "UK Payment Accounts: access and closures" (the "**FCA Account Closure Initial Report**"). This states that "*Firms are not obliged*

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<sup>9</sup> See the FCA letter to the House of Commons' Treasury Committee dated 9 October 2020 in relation to bank account closures of EU-resident customers post-Brexit (<https://committees.parliament.uk/publications/2986/documents/28428/default/>).

<sup>10</sup> UK Finance is a trade association of which most banks are members, including Coutts.



*to explain the reasons why they have reached a decision to close an existing customer's account... This is because the information may be commercially sensitive or could 'tip off' the customer in cases where money laundering is suspected.*"<sup>11</sup>. It goes on to add that the FCA nevertheless "*encourage[s] [a bank exiting a customer] to communicate any exit decision with the customer, where possible, including setting out their reasoning clearly*". This does not have the status of guidance, but is a highly relevant statement of the FCA's position, albeit one stated as a general rule rather than applied to a case like the Client's where Coutts acted inconsistently with its own process of giving reasons and where there were no commercial sensitivity and tipping off concerns; and

**2.20.2** the version of The Financial Ombudsman Service Guidance on Bank Account Closures that applied in April 2023 states that "*You don't have to explain to a customer why you've closed their account*", albeit it adds that "*it can be helpful to do so*".

**2.21** Two weeks after the Client was notified of the Exit Decision, the Head of Client Coverage at Coutts called the Client and explained the reasons for the decision. Whilst Travers Smith viewed this as being a positive development, this does not affect their assessment of a potential breach as it was in response to a 19 April 2023 email from the Client in which the Client expressed his dissatisfaction with receiving the exit letters, containing no explanation for the reasons for the Exit Decision.

Did Coutts comply with the FCA's Dispute Resolution: Complaints sourcebook ("DISP")?

**2.22** No. In the period of time following the issuance of the exit letters to the Client, during which Coutts engaged with the Client to discuss his concerns around the account closures, no complaint was logged by Coutts. A complaint from the Client was eventually logged by Coutts on 4 August 2023, the complaint itself being treated as the email sent by the Client on 19 April 2023 (see paragraph 2.21 above), which had not been identified as a complaint at the time it was received. While the Client's email did not expressly label itself as a complaint or use the word "complaint", it was eventually logged (in Travers Smith's view, correctly) by Coutts as a complaint meeting the definition for the purpose of DISP.

**2.23** As the complaint identified by Coutts was logged on 4 August 2023, several months after it was originally made, it was not handled in accordance with the rules in Chapter 1 of DISP. Among other things, no "prompt" written acknowledgement of the complaint was provided to the Client and a final or other response to the complaint was not provided within 8 weeks of Coutts receiving the complaint, as required under DISP.

Was the Client offered alternative NatWest Group banking facilities?

**2.24** Yes (at the direction of the former NatWest Group CEO), but only on 29 June 2023, after the Client had "gone public", posting a video on his Twitter account at 11:00 that day

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<sup>11</sup> Section 5.41, FCA Account Closure Initial Report.

saying that an unnamed bank had phoned him a few months ago to tell him it was closing his accounts.

- 2.25** After the Exit Decision had been taken (in November 2022), the Client's case was escalated to the Group Reputational Risk Committee ("**GRRC**") for the purposes of enabling the GRRC to understand the basis of the Exit Decision. The GRRC meeting at which the Exit Decision was discussed took place in April 2023.
- 2.26** The minutes of that meeting record that an action point arising was for the Chair of the WRRC to ascertain whether the Retail Banking franchise would accept the Client as a customer were he to apply for a National Westminster Bank plc ("**NWB**") bank account once he had been notified of the Exit Decision. Although some of the people interviewed who had attended the April GRRC meeting recalled that what was in fact discussed was whether Retail would be prepared to offer the Client a NWB bank account, that is not what the minutes say. Furthermore, the documentary evidence, as well as the evidence of the Chair of the Retail Reputational Risk Committee (who was approached by the Chair of the WRRC), does not support the notion that Retail was asked whether it would be prepared to offer the Client a NWB bank account.
- 2.27** When, later that day, the WRRC Chair asked the Chair of the Retail Reputational Risk Committee whether the Client would be given a NWB bank account were he to apply for one, the answer was "no".
- 2.28** Travers Smith do not consider the initial non-offering of NWB banking facilities to be a regulatory breach.

Actions and roles of senior executives and the board at each of Coutts and NWG in relation to the Exit Decision

*Regulatory requirements*

- 2.29** Travers Smith considered the actions and roles of senior executives and the board at each of Coutts and NatWest Group level in relation to the Exit Decision, but not more widely. They also only considered the actions of NWG's senior executives and board members to the extent that those actions are within the regulatory purview in the context that NWG is at the head of a prudential consolidation group including Coutts, but itself is not authorised or regulated by the PRA or FCA. In this context, Travers Smith do not consider any of the actions taken by senior executives and board members of Coutts or NWG in relation to the Exit Decision in the period 1 January 2022 to 29 June 2023 to constitute a breach of applicable law or regulation, in particular the PRA and FCA Senior Managers Regime.

Review 1: key lessons to be learned / recommendations

- 2.30** In light of their conclusions as summarised above, Travers Smith recommend that the following steps should be taken, as soon as possible:

- 2.30.1** HM Treasury has recently published a 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). Taking this into account, NWG and Coutts should review any relevant policies and procedures regarding whether reasons should be given in writing for all non-financial crime exits. Training to relevant teams within NatWest Group should also be provided to reinforce the outcome of this.
- 2.30.2** Amendments should be made to any relevant policies and procedures to make as clear as possible that any communication to Coutts or someone acting on Coutts' behalf meeting the definition of a complaint under DISP, regardless of how it is made, is capable of constituting a complaint under DISP, and needs to be categorised and logged as such promptly. Training to relevant teams should also be provided to reinforce this.
- 2.31** More widely, Travers Smith make recommendations in relation to:
- 2.31.1** The implementation by NatWest Group of more regular checks of the PEP status of Lower Risk PEPs and their classification as PEPs.
- 2.31.2** The implementation of a protocol or other guidance document at NatWest Group level regarding the process for considering whether NWB accounts could be offered to clients being exited from Coutts on commercial grounds.
- 2.31.3** An assessment by Coutts of the circumstances in which clients being considered for "economic contribution"-driven commercial exits should be given an opportunity to increase their economic contribution before any exit decision is taken.
- 2.31.4** Re-assessing the role of Purpose in practice at Coutts and NatWest Group.
- 2.32** As summarised at paragraph 2.46 below, Travers Smith make additional findings concerning the fairness of the treatment of the Client in the round. Issues of fair treatment require a holistic assessment which spans the two Reviews.
- 2.33** Finally, Travers Smith have, as part of Review 1, identified procedural gaps in various exit policies and procedures. They expect to make a recommendation on this subject in the context of Review 3, which should be read in conjunction with their Review 1 conclusions and recommendations.

## **Review 2**

- 2.34** As set out above, NWG agreed with Travers Smith that there would be no limitations or restrictions on Travers Smith's access to materials, information and employees that they considered relevant to the Review. Travers Smith identified and reviewed a substantial volume of contemporaneous documentation for relevant custodians from the period before and after the publication of the BBC Article, and conducted a large number of witness interviews in order to identify the circumstances in which the BBC Article came to

be published, whether this resulted from the disclosure of customer confidential information, and NatWest Group's response to the possibility that confidential information had left the organisation. Travers Smith reviewed relevant Group policies and considered relevant legal and regulatory principles, including GDPR, in order to provide their assessment as to whether, based on the facts as they found them to be, NatWest Group had complied with applicable laws and regulatory obligations. This Section sets out a summary of Travers Smith's key findings and recommendations in respect of Review 2.

- 2.35** Travers Smith were instructed to report to NWG as to whether the matters which are the subject of Review 2 have given rise to any breaches of law or regulation by NatWest Group. Travers Smith were not asked to consider whether any individual breached regulatory rules applicable to them personally, whether directly or indirectly by virtue of the SMCR Duty of Responsibility. Nevertheless, Travers Smith did make certain observations about the conduct of certain individuals where this is relevant to determining whether NatWest Group breached its regulatory obligations.
- 2.36** Travers Smith have concluded that there was no leak of the Client's *specific detailed* financial information (such as account balances).
- 2.37** However, they consider information concerning the Client to have been conveyed, whether expressly or impliedly, from the former NatWest Group CEO to the BBC on 3 July 2023 and / or 4 July 2023.
- 2.38** This information was held by NatWest Group pursuant to the confidential banking relationship between the Client and Coutts and to that extent, and regardless of certain information being in the public domain at the time the disclosure was made, was "*confidential customer information*".
- 2.39** It is noted that the former NatWest Group CEO had not seen the contents of the document provided to the Client by Coutts in July 2023 in response to his first data subject access request at the time of her disclosures to the BBC. Whilst Travers Smith made certain observations about the risks that she should have appreciated in making the disclosures she did to the BBC, Travers Smith's opinion is that, in doing so, she did not consciously set out inappropriately to disclose the relevant information. Her disclosure of certain of the information was an honest mistake as to the applicable law combined with an honest misapprehension that those were, at the relevant time, matters of public record confirmed by the Client, but she did not check the position before starting a risky conversation with a journalist. She honestly, but incorrectly, believed that the Client had publicly confirmed that he was a customer of Coutts.
- 2.40** Travers Smith have concluded that the disclosures probably amounted to a Personal Data Breach for the purposes of GDPR, albeit one that the Information Commissioner's Office did not consider to be formally notifiable. NatWest Group is in close contact with the ICO on this topic.
- 2.41** Travers Smith have not identified evidence of any other relevant disclosures of confidential customer information from NatWest Group during the relevant period.

- 2.42** Travers Smith were instructed to report to NWG as to whether the matters which are the subject of the Review have given rise to any breaches of law or regulation by NatWest Group.
- 2.43** In Travers Smith's view, there is a risk that the disclosure of confidential customer information concerning the Client amounted to a breach by Coutts and, to a lesser degree, National Westminster Bank plc ("**NWB**") (being the regulated bank subsidiaries concerned), of PRA and FCA rules. Specifically, either or both of those bank subsidiaries may have breached regulatory obligations to run their business with due skill, care and diligence (PRA Fundamental Rule 2 and FCA Principle 2), to maintain systems adequate to safeguard the confidentiality of information and to prevent information leakage (PRA General Organisational Requirements for CRR firms, para 2.4) and to pay due regard to the interests of the customer, and to treat him fairly (FCA Principle 6). Travers Smith consider that whether this risk crystallises turns on difficult questions of authority and attribution. As explained above, whether there were breaches and whether to bring enforcement proceedings against Coutts or NWB are matters for the FCA to decide. However, on balance, Travers Smith consider there to be strong factors pointing against such action in this case.
- 2.44** In Travers Smith's opinion, in responding to the possibility that confidential information had left the organisation, NatWest Group (and Coutts and NWB as relevant) did not breach any relevant regulatory obligations. See paragraph 2.46 below for Travers Smith's additional conclusions in relation to the holistic position across Reviews 1 and 2.

Review 2: key lessons to be learned / recommendations

- 2.45** Travers Smith have made certain recommendations for lessons learned and possible improvement, which can be summarised as follows.
- 2.45.1** They make recommendations for relatively modest changes to the NatWest Group Privacy and Client Confidentiality Policy and recommend enhancements to associated staff training.
- 2.45.2** In the context of NatWest Group's One Bank model, they recommend a review of the allocation of prescribed and other responsibilities between the NatWest Group CEO and the CEO of Wealth Businesses (which includes the Coutts business), in particular in light of the status of Coutts as a separate legal entity and PRA and FCA-authorized person.
- 2.45.3** They recommend that NatWest Group considers introducing a formal policy on leak inquiries, to cover specifically suspected or actual leaks of confidential information (as opposed to only leaks of inside information), where such leaks affect *customers'* interests (including the confidentiality of their financial affairs and their rights to privacy).

**Additional conclusions**

**2.46** In Travers Smith's view, Coutts failed to pay due regard to the interests of the Client and failed to treat him fairly *in the round* because of the effect together of: (a) the breaches and potential breaches identified in the context of Review 1 (namely, a potential breach relating to the failure of Coutts to give reasons for the Exit Decision to the Client and a breach in relation to the FCA's complaints handling rules); (b) the fact (as Travers Smith have found in the context of Review 2) that the Client's confidential customer information was disclosed to a third party; and (c) again in the context of Review 2, the failure by NatWest Group (including Coutts) to identify or consider what (if any) steps it might take to address the fact that a false impression was created in the media and in public concerning the Client's financial affairs. In Travers Smith's opinion, the application of Principle 6 (Customers' interests) (and certain more detailed FCA rules which amplify it) requires a holistic assessment of Coutts' treatment of the Client in relation to these matters, which spans Review 1 and Review 2, and is ultimately a matter for the regulator. This is an outcomes-based approach which involves difficult questions of authority and attribution. As explained above, whether there were breaches and whether to bring enforcement proceedings against Coutts are matters for the FCA to decide.