

## **The complaint**

Miss H complains National Westminster Bank Plc (“NatWest”) has not treated her fairly when she wanted to claim a refund of money she’d paid for dental work on her debit card.

## **What happened**

I issued a provisional decision on Miss H’s complaint on 1 March 2023, so I will go over the background again only briefly: Miss H had some dental work carried out abroad by a dental company I’ll call “MT”. Two amounts of £2,333.63 and £1,573.12 were charged to her NatWest debit card on 19 and 20 August 2021, in connection with this work. The purpose of the work was to alleviate pain caused by a serious health condition and involved having crowns fitted which Miss H was expecting to be made of a material called Emax.

Miss H had a dispute with MT over the dental work, which she went to NatWest for help with later in August 2021. Initially it appeared there was a dispute over the amounts paid for the work but the bank didn’t feel it had enough information about what had happened to help. There was some back and forth while it tried to obtain more information from Miss H in September 2021 but in the end NatWest said it still didn’t have enough information to help.

On 11 February 2022 Miss H got back in touch with NatWest with more evidence to support her case. She said she had discovered the crowns were made of the wrong material (Zirconium) and the work had been done badly. After being told by the bank that they couldn’t help, Miss H complained and it seems NatWest agreed to look at the dispute again. There was again some back and forth with the bank asking for more information and Miss H responding, but on 23 and 28 March 2022 NatWest wrote to Miss H to say there was still nothing it could do to help her based on the info she’d provided.

The complaint came to the Financial Ombudsman Service. One of our investigators looked into it and noted that it had been too late by February 2022 for NatWest to try to obtain a refund for Miss H via the “chargeback” process. So it hadn’t treated her unfairly by not refunding her.

Miss H didn’t think this was fair. It had taken a long time to get the evidence she needed to support her case due to dental waiting lists in the UK, and the state of her health meant it could take her longer to do things, so the short time limits imposed on her were discriminatory. And if she had been too late she didn’t understand why the bank would waste her time and get her hopes up by asking for more information. Our investigator said Miss H hadn’t alleged discrimination before so it wasn’t something he could comment on, but that in any event it was Visa who had set a short deadline, not NatWest. There was nothing the bank could have done about the deadline as it didn’t have control over it. He thought the bank could have told Miss H she was too late in February 2022 but ultimately it hadn’t been unreasonable of them to look into matters again.

Miss H was unhappy with our investigator’s assessment and the case was subsequently passed to me to decide. In the meantime Miss H noted that the bank could have told her about these deadlines earlier and reiterated that it had wasted her time.

### The provisional decision

In my provisional decision I firstly considered on what basis NatWest could be expected to help Miss H with her problem with MT:

*“When a person buys goods or services using a debit card, there is no automatic right to a refund from their bank if something goes wrong with what they’ve bought. However, a bank may be able to help their customer through the dispute resolution system administered by the card scheme whose logo appears on the card (in this case, Visa). Disputes raised via this system are usually referred to as “chargebacks”.*

*Chargebacks are not a way of determining someone’s legal rights to a refund from a merchant in relation to a purchase, they are just a way of settling disputes according to the rules set by the card schemes. These rules can be complex; they cover what kind of disputes can be pursued, the kind of evidence which is required and the timeframes in which things must be done. And chargebacks are not guaranteed to succeed – they can be contested by the other side to the dispute. If no side is willing to concede then ultimately the card scheme itself can be asked to rule on the dispute.*

*I would normally expect a bank to attempt a chargeback on behalf of a customer looking to bring a dispute, so long as there was a reasonable prospect of the chargeback succeeding and attempting one would be in line with the scheme rules.”*

I noted that NatWest had not felt that it had had enough information to be able to proceed with a chargeback either when Miss H initially approached it in August 2021 or when she supplied further information in February and March 2022.

I went on to consider what the requirements were under the card scheme rules for a chargeback to be taken forward where goods or services were “not as described or defective”. As our investigator had said, such a claim needed to be made within 120 days of the goods or services being received and NatWest had no control over this deadline. Miss H had received the services from MT in August 2021 meaning a chargeback could be raised at the latest in December 2021. So by the time Miss H returned to the bank in February 2022 it was too late for a chargeback to be raised.

I observed that for a chargeback to be taken forward, the card scheme rules required enough information to be provided to fully understand the nature of the dispute. There was very little evidence of what information had been submitted to the bank in August and September 2021. Neither Miss H nor NatWest had been able to provide much evidence on this point, with the only descriptive evidence from the time being the bank’s internal notes. I observed:

*“The bank’s initial notes only show that the dispute related to MT, and that it needed more information and a description of the service Miss H had purchased, as well as details of any attempt she had made to resolve the matter with MT. Further notes in September 2021 indicate Miss H had said one of the payments to MT was either a duplicate, or a refundable deposit, or a refund which had been accidentally put through as another payment. But the bank wasn’t sure about this because she had entered her PIN for both payments and there was no documentation to support what Miss H was saying.*

*The limited information available about what happened in August and September 2021 suggests that Miss H was not able to provide evidence of exactly what she had purchased and why it wasn’t up to standard, or as described, at this point. It also suggests that some of the information provided was confusing or contradictory, and so the bank didn’t feel confident that it could successfully dispute the matter for her via a chargeback.”*

Concluding, I didn't think NatWest could be criticised for not proceeding with a chargeback at that point in time – it was fair to consider a chargeback would not have had a reasonable prospect of succeeding based on the limited information available. Miss H had commented that the bank ought to have told her about the time limits which applied, but I noted that it was not required to do so.

I did think, however, that NatWest had not handled the situation in February 2022 as well as it could have, finding that:

*“...it should have been obvious to the bank that it was now too late to attempt a chargeback and asking Miss H to provide further evidence would not have made a difference. But it went on to request more information from her several times, and didn't seem to realise it had been too late to attempt a chargeback until after Miss H referred the complaint to the Financial Ombudsman Service. I get the impression the person at the bank Miss H was dealing with was trying to be helpful and probably wasn't aware of the deadline, but ultimately I think this caused some unnecessary inconvenience and hassle for which the bank should pay a moderate amount of compensation.”*

I said I was minded to decide that NatWest pay Miss H £150 compensation to reflect the inconvenience and hassle caused by asking her to provide information which it should have known wouldn't make a difference at this stage. I invited all parties to the complaint to reply to my provisional decision with any further evidence or arguments for me to consider.

NatWest didn't reply to my provisional decision. A Mrs K replied on behalf of Miss H, who she said was too unwell to respond herself. Mrs K explained that she is Miss H's carer and had initially dealt with the bank and that the original complaint had been about the dentist “helping himself” to Miss H's funds in a fraudulent way by taking further payments from her card without her permission. Mrs K said she believed the dentist had hold of Miss H's passport, bank card and PIN while she was abroad. Mrs K was sure that receipts had been provided in time to NatWest for the bank to start a chargeback.

Mrs K noted that Miss H's health and disabilities were a key factor in the case and the bank had discriminated against her. Her health had visibly declined as a result of what had happened and the length of time things had taken. She did not think £150 compensation was fair in the circumstances and that NatWest should be funding or part-funding Miss H's remedial dentistry, which was now going to cost £7,500 on top of what had been paid to MT.

The case has now been returned to me to review once again.

### **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.

Before I continue with my decision I want to reiterate something I said in my provisional decision, which is that I am not deciding any claim Miss H may have against the dentist. I am only making a decision on how NatWest dealt with the dispute over the dentist's work. Miss H is in poor health and I acknowledge she has had a terrible experience with the dentist which may have made things even worse. I don't lack in sympathy for her in the situation she's in, but the level of service she's received from the dentist is separate to the level of service she's received from the bank, which is what I am able to look at.

I also need to address some points Mrs K has raised on Miss H's behalf when responding to my provisional decision. Firstly, this is the first time it has been made clear to me that this is a complaint not just about the dentist doing a poor job and using the wrong type of crowns, but also about *fraudulently* using Miss H's debit card. This is not a point the bank has addressed specifically in any of its written responses to Miss H as far as I can see, nor has it been seriously argued before me until after my provisional decision. The evidence I'd seen up to that point only hinted at a complaint of this type. For that reason, I don't think it would be appropriate for me to make any findings on alleged unauthorised use of Miss H's card by the dentist. This is something NatWest will need to look into, and this may then lead to another complaint which could be referred to the Financial Ombudsman.

Secondly, although Miss H had referred to discrimination, this was again a point which was raised with us later, and was initially focused on the fairness of the chargeback deadlines. As mentioned in my provisional decision, NatWest wouldn't have any control over these deadlines, so I can't say that applying the deadlines would have been unfair of the bank or discriminatory.

The points now raised by Mrs K on Miss H's behalf are about discrimination more generally – this isn't something NatWest has had an opportunity to respond to formally so, as with the point about the dentist making unauthorised transactions on Miss H's card, this is something the bank will need to look into and address with Miss H.

Turning to the main points I addressed in my provisional decision, I do not think the information provided by Mrs K on behalf of Miss H changes anything about my provisional findings. I remain of the view that, based on the limited evidence available of the communications which took place with NatWest in August or September 2021, the bank was presented with a somewhat confusing picture of what had happened and that it wasn't unreasonable of it to decide at that point in time that it didn't have a reasonable prospect of succeeding with a chargeback on the basis that the dental work was not as described or defective. And, when Miss H came back to NatWest in February 2022, it was unfortunately too late for a chargeback to be attempted.

The bank then put Miss H to unnecessary effort by asking her for further evidence and information when it should have been apparent that it was too late for a chargeback to be attempted and that this information would therefore make no difference. The amount of compensation I referred to in my provisional decision was based *only* on the impact of the unnecessary requests for information. And that's because it is the only area where I've found the bank didn't act fairly or reasonably. I still think £150 is an appropriate amount of compensation in respect of this failing.

### **My final decision**

For the reasons explained in this final decision, including the summary of and extracts from my provisional decision, I uphold Miss H's complaint in part and direct National Westminster Bank Plc to pay her £150 compensation.

Assuming Miss H wishes it to do so, NatWest should also review her complaint about the dentist taking unauthorised payments from her debit card, and her concerns about being treated in a discriminatory way (to the extent not already addressed in this final decision).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 18 April 2023.

Will Culley  
**Ombudsman**

