

The complaint

Miss D complains National Westminster Bank Plc has not helped her in a dispute over money she paid using her debit card for a course of dental alignment. Miss D considers she has been the victim of a scam.

What happened

A considerable amount of evidence has been submitted in relation to this complaint. The following summary of events does not go into the finer details but my decision is not intended to be a forensic account.

Miss D paid a company I'll call "S" an amount of £49 on her Visa debit card, on 15 April 2019. This was for a dental impression kit, which Miss D was to use to take impressions of her teeth. These impressions would then be used by S to assess her suitability for a course of dental alignment.

Subsequently, Miss D paid S another £799, also on her NatWest Visa debit card, on 9 May 2019. This was for the course of alignment itself. The treatment involved S posting Miss D sets of clear plastic aligners which were meant to progressively straighten her teeth.

Miss D was concerned that the aligners did not fit her teeth properly. There was some dialogue with S over this. After ten months of treatment Miss D's teeth were not straight and she provided photos to S to demonstrate this. S said it would provide Miss D with another impression kit followed by more aligners, describing this as a "free refinement" of the treatment. Miss D says this resulted in her receiving new aligners in June 2020 for her upper teeth and then in September 2020 for the bottom teeth.

There was further dialogue between S and Miss D, who remained very dissatisfied with the service she was receiving. In October 2020 she left a negative review of S on a well-known review website. She was offered a financial incentive to remove the review, and a senior person ("J") at S got in touch with Miss D, promising to sort things out. There was further back and forth during which Miss D says she felt pressured to agree to attend an in-person scan a long way from her home, once she had finished with the second course of aligners in or around May 2021. It was anticipated that this scan would result in another refinement of the treatment plan.

May 2021 came, and Miss D was unhappy with the results of the second course of aligners. She contacted J in July 2021 to arrange the in-person scan for August when it would be more convenient for her to visit S's clinic. J failed to confirm a date however, and at this point Miss D's patience ran out. From this point onwards she insisted on receiving a full refund from S for its failure to deliver. She wrote to S several times to this end but received no reply. In September 2021 she issued a claim against S in the County Court. This resulted in judgment being made against S on 21 October 2022 for £1,320.23, but Miss D has been unable to enforce the judgment as S seems to have then disappeared, and Miss D considers she has been scammed.

It appears NatWest first became involved in late August 2021. At this time Miss D had

contacted the bank to try to reclaim the payments she made on her debit card. NatWest said it couldn't help get the money back because it was too late to do so via the chargeback scheme. Miss D returned to NatWest in September 2022 with a complaint, saying that it should have treated the scenario as a scam rather than a dispute. She also asked that NatWest provide the details of the bank she had made her debit card payments to (i.e. S's bank).

NatWest stated that it believed the matter was essentially a civil dispute rather than a scam, so it wouldn't treat the matter as one. It also said Miss D needed to get a court order requested by a law enforcement agency before it would release the details of S's bank. NatWest did acknowledge there had been some communication failings on its part and paid Miss D £200 compensation in respect of this.

Miss D then brought the matter to the Financial Ombudsman Service for an independent assessment. One of our investigators looked into it, and came to the following conclusions:

- By the time Miss D had contacted NatWest for assistance with the payments to S, it was already too late for the bank to help via the chargeback process. The last dates chargebacks could have been attempted for the two payments to S were 6 October 2020 and 30 October 2020 respectively, regardless of what Miss D's wider circumstances were. The bank had not been responsible for Miss D incurring costs in going to court. It had given Miss D information about other ways she could resolve her issues with S, but ultimately any decision to go to court had been hers.
- Although Miss D felt the issues with S should have been dealt with as a scam, the most appropriate way of dealing with things had been to explore whether it was possible to get the money back via the chargeback scheme. This was because Miss D had received the aligners but was unhappy about their quality.
- NatWest was not required to support Miss D with enforcing the CCJ she had obtained against S. It had, however, provided her with incorrect information about how she could obtain the details of S's bank.
- It had now come to light that NatWest no longer had access to information about S's bank because it was held on systems where the relevant data was erased 540 days after the date of the payment in question. So the bank hadn't even had the information by the time Miss D contacted it for help the first time. It had therefore been wrong of it to tell her it would only provide the information if a law enforcement agency obtained a court order. Miss D had not acted on this incorrect information so the impact was limited.
- On a phone call with the bank on 12 September 2022 it hadn't been disputed that Miss D was provided with further incorrect information which had unfairly got Miss D's hopes up and led her to believe she had been given incorrect information by the bank about it not being able to help previously.

Our investigator considered the £200 already offered by NatWest was sufficient compensation to cover its service failings.

Miss D didn't agree with our investigator. I could summarise her key points as follows:

- She did not see how what had happened could not be classed as a scam. S had been acting illegally due to her treatment not being overseen by a dentist. She had discovered through research that this had been the case, and S didn't have any dentists working for it and had even falsified the registration details of the dentists on

its website. NatWest had also sent her a list of indicators which indicate that a scenario should be treated as a scam, and her scenario had met all the criteria. So why hadn't the bank treated it as one?

- She was not convinced she had been given correct information about the chargeback timeframes.
- The name of S's bank was one simple detail which NatWest should give her, and it would have access to this information. The bank had originally advised her to take court action against S, but now it was refusing to supply the name of S's bank so she could enforce the court order she had obtained at her own expense.
- The bank had repeatedly given incorrect information which had either left her out of pocket, or would have done had she acted on it. It had also contributed to a decline in her health. She had been left with a hole in her finances by the inability to reclaim the money paid to S, plus the court costs that she'd needed to pay. This, in turn, had meant she was unable to pay a court order of £1,245 in December 2022. In the end she'd had to borrow money from family to pay it.

As no agreement could be reached, the case has been passed to me to decide.

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.

When someone makes a purchase of goods or services using a debit card, and something then goes wrong with that purchase, there's no general obligation on their card issuer (NatWest in this case) to provide a refund or other assistance. The main exception to this is where the issuer can help by making use of the dispute resolution system administered by the card scheme whose logo appears on the card. This mechanism for claiming a refund, is usually referred to as "chargeback".

Chargebacks are subject to complex sets of rules which are set by the card scheme (in this case, Visa). The rules cover, among other things, the types of dispute which can be dealt with via a chargeback, the evidence required, and the window of time in which a chargeback must be attempted.

A consumer cannot insist that their card issuer attempts a chargeback. It isn't a consumer right. However, I would expect a card issuer, when approached by a consumer looking for help with a debit card transaction for a purchase of goods or services, to consider whether it is able to help by attempting a chargeback, and doing so where this would be compliant with the card scheme rules and would have a reasonable prospect of succeeding.

A typical scenario which can be dealt with via the chargeback process would be where someone has paid for goods or services and these are not as described or are defective. I think this is the scenario under the card scheme rules which best fits Miss D's situation. However, as our investigator noted, Visa imposes a maximum time limit of 540 days from the date of the transaction(s) for a chargeback to be attempted for this reason, and there's no dispute that Miss D contacted the bank outside of this window.

Miss D has pointed out that the circumstances of her dispute with S meant there was good reason why she didn't approach NatWest until after the 540 days had expired. I understand this point. Ultimately though, it isn't the bank which makes the rules, and Visa clarified in guidance issued to banks in April 2020 that it would not make exceptions to its time limits,

even in scenarios where delays had been caused by things out of people's control, such as the COVID-19 pandemic.

Having considered the circumstances in which Miss D first approached NatWest for assistance with getting her money back from S, I think it was too late for the bank to attempt chargebacks against the payments and it therefore did not act unfairly or unreasonably in refusing to do so. It also appears to have given the correct information about this at the first time of asking (though it later gave confusing or conflicting information). Like our investigator, I think Miss D made her own decision to take the matter to court. I cannot see that the bank forced Miss D to take that course of action.

This brings me to the question of whether the scenario with S was a scam which NatWest should have protected Miss D from.

Miss D notes that NatWest provided her with a list of 13 of its own "scam indicators" and she considers her scenario fits the majority of these. I do not think it is necessary to go through these point by point, but I acknowledge an argument could be made that *some* of the indicators appeared to apply to the scenario. But they are not definitive of a scenario being a scam and, having considered the evidence, including the account of events Miss D prepared for the court, I do not think the scenario bears the hallmarks of being a scam. It is mainly the following aspects of it which have led me to this conclusion:

- Miss D did receive products she'd ordered from S.
- When Miss D expressed her dissatisfaction with the aligners and the results of the treatment, S provided replacement products, and communication in an effort to find a solution was ongoing up until mid-2021, which was more than two years after Miss D had paid S.
- My own research indicates the dentists named on S's website are both registered as dentists with the relevant authorities in the UK. One of these individuals, who Miss D believed was not a dentist, appears to be associated with other companies which share directors with S. While there's no way for me to confirm that she worked for or with S, the evidence points in that direction.

These are not the sort of things which I'd have expected to see in a typical scam. My view is that there may be some merit to Miss D's concerns about the level of care and skill S showed in its dealings with her, and the quality of its products. But that doesn't mean S was perpetrating a scam. I think it's more likely that the problems Miss D experienced with S were down to a lack of skill or competence.

What has happened is essentially a civil dispute which a bank would not be expected to intervene in (except via the chargeback process, which was not an available avenue for the reasons already explained). In short, NatWest did not act unfairly or unreasonably in failing to treat the scenario with S as a scam.

Miss D asks why the bank won't provide her with information about where the payment to S went to. I understand Miss D is looking to enforce the court judgment against S and is seeking the name of S's bank so she can obtain a third party debt order.

Our investigator made further enquiries of NatWest, which says it no longer has this information as it is deleted 540 days after the transaction. By the time Miss D had contacted it about the problems, it was already too late for this information to be retrieved.

Having investigated this point further I think it's possible the bank could have obtained this

information up to *two years* from the date of the transactions. This is because Visa's rules allow a type of dispute known as "compliance" to be raised in relation to a transaction up to two years after it was made. For such a dispute to be raised against the receiving bank, I think the details of the receiving bank must still be available up until that time. But I note Miss D didn't contact NatWest until August 2021, more than two years after her final payment to S. So, whether the information was held for 540 days or two years, it would have been deleted by the time Miss D first contacted the bank.

This means I find NatWest did not treat Miss D unfairly or unreasonably in not disclosing the details of where the payment to S went to – it did not have the information in its possession to be able to do so. I realise this leaves Miss D in a difficult situation as she has a court order which she has been unable to enforce – if she has not already done so she may wish to seek legal advice on whether there are any other enforcement avenues available.

NatWest accepts that it provided incorrect and inconsistent information at times during the course of its communications with Miss D over her dispute with S. It's not clear why the bank told Miss D some things, for example that she needed to provide a copy of a court order obtained by a law enforcement agency for it to provide information it didn't in fact hold. I agree communication has been poor. But as our investigator noted, the impact of this has been limited. I think the £200 compensation paid in respect of communication failings is fair.

Miss D has referred to her health suffering and the hole in her finances caused by being unable to enforce the court order. I was sorry to hear these things and I don't lack in sympathy for Miss D's situation. Ultimately though, I'm required to decide a complaint about NatWest and, for the reasons outlined above, I do not think the bank had a responsibility to refund the money, nor could it have provided the information Miss D wanted to help her enforce the court order. And while the bank's communication was lacking, I think the amount the amount of compensation it has already paid is sufficient compensation to reflect the impact of this.

My final decision

For the reasons explained above, I do not uphold Miss D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 25 August 2023.

Will Culley
Ombudsman