

The complaint

Mrs W complains that National Westminster Bank Plc ("NatWest") refused to raise chargeback claims in respect of money held with two gambling merchants. She also complains that NatWest failed to offer her support as a vulnerable customer and sent her a letter about overusing the chargeback system which wasn't appropriate.

What happened

During 2022, Mrs W raised complaints against NatWest about the issues set out above. This was prompted by several things but essentially came down to the following:

- NatWest refused to raise chargebacks against two gambling merchants. Mrs W says those merchants closed her accounts because she had registered with GAMSTOP which wasn't correct. The merchants had previously agreed to her withdrawing money from the accounts but didn't honour this. And the merchants now held money she had deposited in the accounts which she wanted returned.
- NatWest should have done more to support her after she told them in October 2020 that she was vulnerable. In particular, they hadn't offered to transfer her to specialist support within NatWest or offered her help on how to stop gambling, such as blocking payments.
- NatWest sent her a letter saying she had made multiple chargeback claims and had said that a particular claim was potentially fraudulent. Mrs W spiralled into a deep depression and dissociative state at the suggestion she wasn't being truthful.

NatWest initially said to Mrs W they would try to help her with the chargebacks against the gambling merchants if she sent in sufficient supporting evidence. But they ultimately didn't raise the chargebacks. They did though accept that they should have offered Mrs W more support as a vulnerable customer from 2020 onwards and offered her £200 for the inconvenience she'd been caused.

NatWest felt they had acted reasonably in sending Mrs W the letter about over-using the chargeback system but apologised if she had been upset by its content.

Our investigator felt that NatWest were correct not to raise the chargebacks against the two gambling merchants as there was no means under this system to recover winnings. She felt that NatWest's offer of £200 in respect of their failure to support Mrs W as a vulnerable customer was fair. And she felt that NatWest hadn't made any error in sending the chargeback over-use letter to Mrs W.

Mrs W didn't agree with our investigator and so her complaint was passed to me for a decision.

I issued my provisional decision on 8 December 2023, in which I said the following and which forms part of my final decision:

'Before I set out my provisional decision, I want to acknowledge I've summarised the events of the complaint to quite some degree. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mrs W and NatWest that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. I appreciate that this has been a very difficult situation for Mrs W, and I want to thank her for being so honest about her vulnerabilities in her submissions.'

Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

I'll deal with each complaint point in turn.

The chargebacks to the gambling merchants

Mrs W says the purpose of raising the chargebacks was to recoup the money that was sitting in the accounts with the gambling merchants. I understand that Mrs W wants to reclaim payments she made from her NatWest current account to those merchants. I'll set out below the dates the monies were transferred and the amounts, as shown in Mrs W's account statements.

Merchant A

*16/5/22 - £512.50
19/5/22 - £461.25
20/5/22 - £512.50
23/5/22 - £512.50
26/5/22 - £461.25
26/5/22 - £512.50
27/5/22 - £461.25
16/5/22 - £307.50
20/5/22 - £512.50
23/5/22 - £512.50
26/5/22 - £461.25
26/5/22 - £461.25
26/5/22 - £461.25*

Merchant B

*30/5/22 – £512.50
30/5/22 - £768.75
30/5/22 - £512.50
30/5/22 - £512.50*

I note that NatWest initially said to Mrs W there were no chargeback rights applicable for her to reclaim the money as these were gambling winnings. Our investigator felt the same. However, I don't currently agree with this. I understand that Mrs W held a Mastercard debit card at the time and that this card was used to make these transactions. I have looked at the chargeback rules that were applicable at the time which set out the following under the heading 'Gambling and Investment Chargebacks'.

'Chargebacks are available to the issuer for transactions in which value or assets are purchased for gambling, investment, or similar purposes and they are not provided

according to the contractual terms and conditions agreed to between the cardholder and the merchant.

Additionally, chargebacks are available when the value or assets are made inaccessible for use in violation of the contractual terms and conditions. This may include, but is not limited to, when the value or assets are unable to be withdrawn by the cardholder or are transferred to an account outside the cardholder's control without the cardholder's authorization.

An issuer has no chargeback rights related to the use or authorized transfer of such value or assets, or on any winnings, gains or losses resulting from the use of such value or assets. An example includes, but is not limited to, when the value or assets are subsequently exchanged or otherwise utilized in a separate, non-Mastercard transaction'.

I agree this doesn't give a customer chargeback rights to reclaim winnings. Mrs W isn't though trying to reclaim winnings from what I can see. She is attempting to reclaim money that she deposited into the accounts of the gambling merchants. I say this because the amounts Mrs W is trying to reclaim matches those amounts that were transferred from her NatWest current account to the gambling merchants. So, she didn't use those monies to gamble; rather she used them to deposit money presumably to use in the future for gambling. I haven't though seen any evidence that Mrs W did use those monies to gamble.

The chargeback rule above sets out that an issuer has rights to claim for 'value or assets' that 'are unable to be withdrawn by the cardholder'. It also sets out that 'value or assets' are those which are 'purchased for gambling' and which are 'not provided according to the contractual terms and conditions' agreed between 'the card holder and the merchant', which here is Mrs W and the gambling merchants.

I think an intrinsic contractual term would be that Mrs W was able to withdraw money she had deposited in the account. Indeed, I've seen evidence from Mrs W in the form of e-mail trails that she asked one of the gambling merchants for a withdrawal of monies, to which they agreed. I've also seen evidence that Mrs W forwarded those e-mail trails to NatWest. I've seen no evidence that the monies were returned to Mrs W and indeed the likelihood is that this didn't happen because the gambling merchants closed the accounts.

NatWest has said to us they refused to raise the chargebacks because the claims were weak, weren't supported by evidence and could be easily contested. I don't though currently agree with this. I think Mrs W provided reasonable evidence that monies she had deposited hadn't been returned to her and I note also NatWest initially felt these were 'winnings'. I have though set out above why I don't agree with that.

I realise NatWest feels that Mrs W has made a number of chargeback claims for gambling and I suspect that might be one of the reasons why it was hesitant to raise them here. However, Mrs W is still afforded chargeback rights and NatWest should still raise these if the claims are supported with evidence and there is a reasonable prospect of success. I find that Mrs W's claims were supported with evidence. We also have no idea what the merchant's defence would have been to the claims. It seems they've said they closed the accounts because Mrs W registered with GAMSTOP. It's possible they might have used that in their defence but that wasn't guaranteed; indeed, they may not have defended the claims at all.

I note also that Mrs W disputes she registered with GAMSTOP and could have provided evidence of this. So, even if the merchants had defended the claim in that way, she might have been able to provide further evidence to support her claim (which NatWest needed to have considered).

I'd add here as well that the merchant's terms and conditions needed to have been considered if they had made that argument. It could be for example that there was no term

stating that a customer couldn't reclaim deposited money once they register with GAMSTOP or other gambling charities and advice networks. Again, we don't know this because NatWest didn't raise the claims.

I don't currently agree that NatWest has been able to show me the claims had no reasonable prospect of success. Or that the claims had been raised out of time.

So, for the reasons I've set out above, I find that NatWest didn't handle Mrs W's chargeback requests fairly or reasonably. As such, I think they should refund her the amounts she sought to reclaim which totals £8,456.25 and that they should add interest to this at 8% simple per year, from the dates each payment was transferred from Mrs W's account to the date of settlement.

I also find that NatWest's failure to handle the chargeback claims fairly has inconvenienced Mrs W and think an award should be made for this. I find that £200 is a fair amount to award in these circumstances.

NatWest's lack of support to Mrs W as a vulnerable customer

I've seen that Mrs W sent NatWest an e-mail in October 2020 where she explained her vulnerabilities to them. NatWest accepts they didn't act on this by further engaging with her to see what support they could offer her. I note also that NatWest accepts they should have offered Mrs W more support once they introduced their 'Banking MyWay' initiative which was designed to record things like customer vulnerabilities. I understand though that NatWest didn't offer this feature to Mrs W for some time.

It's possible NatWest could have offered Mrs W some helpful, practical support not only in respect of her as a vulnerable customer generally but also how Mrs W's vulnerabilities lead her to gamble compulsively.

I realise Mrs W feels her situation would have been very different had NatWest acted at the appropriate times. It's difficult for me though to be sure what difference this would have made. As such, I'm not minded to say that NatWest should increase their offer of £200. I would add here though that NatWest needs to ensure they offer Mrs W the right support to her in the future bearing in mind her vulnerabilities.

The chargeback overuse letter

I've seen a copy of the template that NatWest used when it sent Mrs W the letter in question. It essentially said to Mrs W that she had made multiple claims of this kind, which I'm assuming here was in respect of payments to gambling merchants. It also said she needed to consider the authenticity of any future claims and to remember that false claims were considered to be fraud.

I understand why Mrs W was upset when she received this letter particularly in view of how this affected her in relation to her vulnerabilities. I also note though that this particular letter from NatWest is generated automatically once a certain amount of chargeback claims are raised in a given period. I don't find I can say that it was unreasonable for NatWest to send this as I understand this is sent to any customer when such a threshold is exceeded. I also don't think NatWest were intimating that Mrs W was committing fraud although I do understand why the use of the word 'fraud' would have alarmed her.

As such, I don't currently propose to instruct NatWest to make an award in relation to this complaint point. I would just add here though that NatWest does need to think about how such letters will be received by vulnerable customers. But that is a matter for NatWest.

Summary

For the reasons set out above, I currently intend to direct NatWest to refund the amounts Mrs W sought to reclaim by chargeback from the two gambling merchants, with interest. And NatWest should pay Mrs W £200 for the inconvenience their handling of this caused her. NatWest should also pay Mrs W the £200 they offered her in respect of their lack of support to her as a vulnerable customer.

I would like to reiterate however that this is my provisional decision. That means both parties have the opportunity to send me further comments and evidence for me to consider. I've mentioned above that I have reached my provisional conclusions on the balance of probabilities. So, there's a possibility that further evidence provided by either party may change my conclusions. I want to ensure that both parties are aware of this'.

I invited both parties to send me further comments and evidence to consider.

Mrs W replied saying she was pleased with my provisional decision. She said she would have liked further acknowledgement and compensation for NatWest not acting sooner in offering her specialist support although accepted it was difficult for me to quantify what difference that would have made. Mrs W subsequently mentioned that, if NatWest had offered that support sooner, she would have gained greater understanding and support from them as well as learning much earlier how to block gambling transactions. And Mrs W said she would have had support in processing the emotional impact at a much earlier stage as well as educating her on how to block access to gambling sites through GAMSTOP. This ultimately would have saved her many thousands of pounds as well as potentially leading to an earlier journey to recovery.

NatWest replied saying they had explained to Mrs W the risk of her continuing to use gambling websites, but she continued to use them. They referred me to separate complaints made by Mrs W to them which we had considered. NatWest also felt they had tried to support Mrs W but says she doesn't want them to intervene and mentioned she hadn't responded when they offered support during the complaints process.

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.

I'd like to thank Mrs W and NatWest for their replies to my provisional decision. I've carefully considered what both parties have said.

I appreciate Mrs W feels that NatWest offering support sooner would have made a practical difference, both emotionally and financially. I understand why she feels that way. However, I still can't be sure that any further support would likely have made a difference to the extent that I can quantify that difference or that I should make an increased award of compensation.

It may be the case that NatWest said to Mrs W there was a risk of her continuing to use gambling websites. Nevertheless, that doesn't change my view that Mrs W was afforded chargeback rights here to reclaim the money she had deposited to the gambling merchants in question. NatWest, in my view, misunderstood this as I explained in my provisional decision. And, although we have investigated other complaints made by Mrs W to NatWest, my consideration of this complaint is about what happened in these particular circumstances. I'd add also that NatWest does accept they should have offered Mrs W support sooner than they did, as do I, and offered her £200. I can't comment on what

specific level of support they should offer Mrs W going forward but they should still ensure that appropriate support is available to her if she needs it.

Putting things right

I find that NatWest didn't handle Mrs W's chargeback requests fairly or reasonably. As such, I find they should refund her the amounts she sought to reclaim which totals £8,456.25 and that NatWest should add interest to this at 8% simple per year, from the dates each payment was transferred from Mrs W's account to the date of settlement.

I also find that NatWest's failure to handle the chargeback claims fairly has inconvenienced Mrs W and that an award should be made for this. I find that £200 is a fair amount to award in these circumstances.

NatWest should also pay Mrs W the £200 they offered her in respect of their lack of support to her as a vulnerable customer.

My final decision

My final decision is that I uphold this complaint. I require National Westminster Bank Plc to take the action I've described above in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 9 February 2024.

Daniel Picken
Ombudsman