

The complaint

Miss J complains about being misgendered during her interactions with National Westminster Bank Plc (NatWest).

What happened

Miss J discovered her debit card didn't work when trying to purchase a train ticket. This prompted her to visit her local branch to resolve the problem. While in branch, Miss J says she was misgendered by two staff members, despite wearing makeup and having introduced herself by name. Miss J says this caused her considerable distress and she left the branch in tears.

Miss J also reported being misgendered during phone calls with NatWest while trying to resolve the issue detailed above; once where the agent screamed at her and told her he was misgendering her because she was being annoying, and another where the agent began to say 'Sir', but coughed to cover their mistake. The agent then denied having called Miss J 'Sir', stating they coughed due to having a cold.

Miss J has told our service that because of her experience in her local branch – a short walk from her home – she felt she needed to visit other branches to fulfil her banking needs. These branches required train rides, costing her around £39 in total. She also said she needed to call NatWest 83 times during the period in her attempts to resolve the issue.

In its final response to Miss J's complaint, NatWest apologised for what had happened. It said it didn't feel a monetary value could be attributed to what Miss J had experienced and instead sent a gift hamper to her home.

NatWest has been unable to find a call where a member of staff screamed at Miss J, or said they were misgendering her because she was annoying. But it accepts Miss J was misgendered in branch and that a call took place where the agent coughed to cover calling Miss J 'Sir'.

NatWest acknowledged the issue was difficult for Miss J and that it had occurred on more than one occasion, but highlighted Miss J's 'abusive manner' during 'multiple calls'. It told Miss J that the behaviour and language she had used would not be tolerated in future.

Miss J wasn't satisfied with this and so she contacted our service. She told us she was unable to use the items in the gift hamper and that she expected the maximum monetary award as a resolution to the complaint.

Our Investigator upheld the complaint, asking NatWest to refund the money Miss J spent on trains to and from branches. She accepted Miss J's testimony about the times she'd been misgendered and said that, although NatWest didn't have any call recordings to send of the instances Miss J complained about, she had no reason to doubt what Miss J had told our Service.

Miss J sent over screenshots to show the number of calls she'd made to NatWest, and so

the Investigator was also able to accept what Miss J had said on this point. She highlighted that NatWest only had one call recording from the period, but, again, didn't see this as a reason to doubt Miss J's testimony.

Finally, the Investigator talked about the gift hamper NatWest sent Miss J. She said NatWest wouldn't have known Miss J couldn't have used the items it contained. Overall, she felt compensation of £200 better addressed the trouble and upset Miss J experienced.

NatWest accepted the Investigator's view. But Miss J wasn't happy with the compensation amount. Because no agreement could be reached, the case has been passed to me to decide.

I issued my provisional decision on this complaint. It said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, my intention is to uphold this complaint – I'm minded to say a higher compensation award than previously recommended is justified in the circumstances.

I should point out that Miss J reports other instances of misgendering by NatWest's staff. However, this complaint deals with the occasions detailed above, which NatWest has had a chance to comment on prior to this decision. This also applies to the issue with Miss J's debit card, mentioned above, and the concerns she has raised around overdraft interest and fees. As these concerns weren't raised as part of this complaint, I won't be considering them in this decision.

NatWest has accepted it got things wrong and our Investigator agrees. And I note that NatWest has also agreed to reimburse Miss J's travel expenses. As the case has now been passed to me for a decision, I've looked to satisfy myself on whether the compensation recommended does enough to make up for any failings NatWest made.

On balance, it's more likely than not that NatWest was aware of Miss J's title and pronouns when it misgendered her. Miss J has provided detailed submissions on the circumstances of this complaint, and it's clear to me that she has been caused a great deal of upset.

The nature of the situations outlined in this decision has a cumulative effect. Instances of misgendering are very challenging for Miss J, particularly when she feels her authentic gender isn't being recognised by the wider society. And I do empathise with her position. However, whilst I don't have recordings of the specific instances mentioned in this complaint, having listened to the call recordings available, what she described as hate speech appeared to me to be genuine mistakes, where profuse apologies were given.

For understandable reasons, Miss J becomes very distressed when misgendered. So, I can understand how, in those situations, conversations can quickly escalate. And whilst I don't doubt that calls took place, I think there are a number of explanations that could apply. For example, Miss J could have felt she was being screamed at where a call handler simply found it difficult to de-escalate a heated conversation, feeling they needed to raise their voice to put forward a conciliatory point.

By suggesting other perspectives – as I've done above – I don't intend to downplay what has happened. I don't doubt that Miss J felt humiliated and treated without dignity and respect. I recognise Miss J's feeling that what happened was not a mistake and it saddens me to see all of the examples of misgendering she has mentioned in her submissions. But from the recordings I have been able to listen to, I consider it important to recognise that when calls

become heated, they put everyone on the call under significant pressure. Staff members are human and can sometimes display poor judgement in the moment when acting under pressure, frightened of saying the wrong thing. In the particular circumstances of the matters I'm looking at here, I'm persuaded that no one Miss J spoke to wanted to deliberately upset her.

And in a similar vein, whilst I can see Miss J called NatWest many times during a period of around six months, I think it's unlikely that all of these calls were necessary for the provision of banking services. I say this due to the content of the calls I've been able to listen to, which often became unproductive, but also as the volume of calls was far higher than I'd typically expect in the period from a customer of a bank. However, based on the submissions from both parties, I'm inclined to say Miss J would have faced some difficulty in having her banking needs met during these calls. With that in mind, I've factored this in when arriving at a figure of compensation, detailed below.

I've taken a balanced and measured view of the circumstances of this case, attempting to see the situation through the eyes of all those involved before reaching an answer. I should mention that this decision deals with the interactions specific to this complaint. And so, whilst I'm aware of other complaints from Miss J against NatWest, with a broad range of awards for distress, the figure I've arrived at is based on my conclusion that the issues I've looked at were, on balance, honest mistakes. And whilst there's no question they have caused real and avoidable upset to Miss J, I consider my proposed award to be fair and reasonable in all the circumstances that I've considered here. So, having thought very carefully about an appropriate amount of compensation, I'm minded to direct NatWest to pay Miss J £350 for the distress it caused, and £39 to cover her travel expenses.

NatWest responded to say it had nothing else to add for my consideration.

Miss J didn't accept my provisional decision and provided some further comments.

- Miss J has asked whether I've listened to the calls mentioned in my provisional decision. She feels I've simply trusted NatWest's word on the matter.
- She is unhappy with my observations on NatWest finding her manner to be abusive. She states she isn't the one being investigated.
- Miss J states the instances of misgendering I've addressed in my provisional decision are hate speech, and that NatWest has broken the law.
- She believes the above instances were deliberate.
- She also believes the Equality Act 2010 has been breached.
- Miss J thinks I should direct NatWest to pay her more than £350 as another offer from NatWest, relating to a different complaint, was higher.

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.

Having done so, I see no reason to depart from the findings in my provisional decision – I'll explain why.

My provisional decision referenced NatWest not being able to provide all of the calls mentioned in this complaint. I should point out that, despite being asked for recordings, it isn't unusual for firms to be unable to source recordings for such a high volume of calls, or calls made to or from different internal departments (as opposed to general customer service lines). Where required, I've made *on balance* findings about what I think most likely happened. But, where calls *have* been available to me, I've considered their contents in

order to reach the conclusions outlined above.

These contents have also helped inform my understanding of the general interactions between Miss J and NatWest. This includes any action Miss J may have taken to mitigate or compound the difficult situations at the heart of this complaint. I mention this because Miss J has implied NatWest is the entity under investigation here. I think it's appropriate at this point to highlight that our service is not a consumer group – we don't take sides. As such, whilst my role is to determine if NatWest got something wrong which caused Miss J to lose out, I've listened to both sides and have considered the actions of the parties when deciding this complaint. My findings remain that, on balance, the instances of misgendering I've covered in this decision were likely not deliberate. I've been presented with no further evidence that persuades me otherwise.

Our service is an informal alternative to the Courts. This means we don't have the power to make a finding of discrimination under the Equality Act 2010. That's something only the Courts can do. However, we can decide if a consumer has been treated fairly, and when doing so, we take relevant legislation, rules, and regulations into account – including the Equality Act 2010.

Ultimately, this complaint is being decided based on what's fair and reasonable. And my decision is NatWest hasn't always acted fairly and reasonably in its dealings with Miss J. However, if Miss J would like a decision that NatWest has breached the Equality Act 2010, then she'd need to go to court.

Similarly, on Miss J's comments around hate speech, my provisional decision states: '*what she described as hate speech appeared to me to be genuine mistakes, where profuse apologies were given.*' If Miss J remains concerned that hate crimes have taken place, this is something she may wish to ask the police to look into, as a more appropriate body to progress issues of this nature. Our service is not the right body to say, categorically, whether hate speech has or hasn't taken place, so I won't comment on this further.

Each case considered at our service is decided on its own merits. I have set out the reasoning which underlines why I think my directions to NatWest are fair. This reasoning is based on the individual circumstances of this case, using all available evidence and arguments. And whilst I recognise that Miss J may have received greater amounts of compensation through other complaints, I haven't been presented with any evidence which persuades me more compensation is appropriate in the circumstances of *this* complaint.

My final decision

For the reasons above, I uphold this complaint and direct National Westminster Bank Plc to pay Miss J £350, less any amount already paid, for the distress it caused in relation to the merits of this complaint. I also direct it to pay Miss J £39, less any amount already paid, to cover her travel expenses.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 7 August 2024.

James Akehurst
Ombudsman