

## The complaint

Miss R complains Bank of Scotland plc (“BOS”) hasn’t dealt fairly with a dispute she raised over a payment she made on her debit card to a dental clinic (“CG”) in Turkey.

## What happened

I issued a provisional decision on Miss R’s case on 24 April 2024, which set out the background to, and my provisional findings on, her complaint about BOS. A copy of that provisional decision is appended to, and forms a part of, this final decision.

In very brief summary, Miss R had made a £2,789 part-payment on her BOS debit card for dental treatment in Turkey to take place in late 2022 and early 2023. The treatment did not go as Miss R had expected and she was very dissatisfied with the end results. She contacted BOS in January 2023 to dispute the payment made on her debit card. She also raised a dispute with a credit card company she’d used to make another partial payment. This company refunded the money she’d paid on her credit card, citing section 75 of the Consumer Credit Act 1974.

Section 75 was not an option for BOS as this protection doesn’t apply to debit cards. It attempted what’s known as a “chargeback” against CG. The chargeback was opposed by CG, and BOS escalated things further to a stage called pre-arbitration, but CG continued to resist attempts by the bank to claim a refund in this way. BOS decided not to pursue the chargeback to the final stage – arbitration – where the Visa card scheme would have made a ruling on the dispute. BOS suggested to Miss R that she could provide more information to support her case, but this was wrong because Visa’s rules didn’t permit the provision of further information at the arbitration stage. The bank also quoted incorrect timescales to Miss R. It paid her £40 compensation in respect of its customer service failings, but did not refund the payment made to CG.

In my provisional decision I analysed BOS’s actions alongside Visa’s chargeback rules, and I looked in particular at the bank’s decision not to pursue Miss R’s dispute further to the final stage of arbitration. I concluded that the prospect of the chargeback having succeeded at arbitration was at best uncertain. I noted that Visa would not have been able to consider the expert medical evidence Miss R had later obtained, that CG would likely to have continued to oppose the chargeback robustly, and that CG’s offers to carry out remedial work may have weighed in its favour with Visa. Overall I was unconvinced that, had BOS escalated the chargeback to arbitration, that this would have resulted in Miss R receiving a refund, and I therefore didn’t consider it fair that the bank be required to refund Miss R.

I did think, however, that the customer service provided by the bank had been poor and that £40 compensation was insufficient to recognise the frustration and wasted time caused by it having given incorrect information on multiple occasions. I said I was minded to direct the bank to pay a further £110 compensation in respect of this.

I invited both parties to respond to my provisional decision. BOS said it had nothing further to add. Miss R said she wasn’t happy that she was being awarded only a further £110. She highlighted that she’d tried resolving things many times with CG in Turkey. She said the

dentists had not provided adequate work and had produced fake documents relating to the work that was done. Miss R said that BOS hadn't taken her issues seriously or dealt with the matter appropriately. Miss R added that another dentist had now replaced the work on her top jaw, but that no dentist was willing to work on her bottom jaw for anything less than £25,000 due to the risks involved. Miss R said she was going to need frequent Botox injections for the rest of her life due to nerve damage caused by CG.

The case has now been returned 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.

I've carefully considered Miss R's comments. I do appreciate the seriousness of the medical complications she's had following the treatment from CG, and the distressing experience she had with them. When deciding Miss R's complaint however, I've needed to consider whether it's fair and reasonable to require BOS to refund the part-payment of £2,789 made on her BOS debit card. The chargeback process was the only way the bank could have reclaimed this money for Miss R. As I explained in my provisional decision, I was unconvinced that, had BOS escalated the chargeback to arbitration, that this would have resulted in Miss R receiving a refund. The bank did provide poor service during the process of disputing the payment, but I didn't think that had had an impact on the ultimate outcome.

Miss R's comments do not change my assessment of the likelihood that BOS would have been able to obtain a refund for her, had it escalated the chargeback further. My views on that point remain the same as outlined in the appended provisional decision, and for the same reasons.

Regarding the amount of compensation for the bank's customer service failings, I see no reason to depart from the overall figure of £150 (i.e. £110 in addition to the amount already paid) I arrived at in my provisional decision. I don't necessarily think it's the case that BOS failed to take Miss R's problems seriously – it did try twice (through the initial chargeback, and then the pre-arbitration process) to claim a refund for her – but at times its service fell short, specifically when it came to providing accurate information.

I know Miss R will be disappointed with my decision. I noted in my provisional decision that Miss R may wish to explore the possibility of returning to her credit card company to expand the scope of her section 75 claim. This is something she may still wish to consider, although I would reiterate that I'm unable to comment on the likely outcome. I am not sure if this is something else Miss R has considered, but she may also want to take legal advice on whether she has any prospect of making a medical negligence claim directly against CG.

### **My final decision**

For the reasons explained above, and in my appended provisional decision, I uphold Miss R's complaint in part and direct Bank of Scotland plc to take the following action:

- Pay Miss R £110 compensation in addition to the £40 it has already paid, for the frustration, annoyance and inconvenience caused as a result of it advising her incorrectly multiple times about the time limits which applied to the chargeback process.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 13 June 2024.

Will Culley  
**Ombudsman**

## **COPY OF PROVISIONAL DECISION**

*I've considered the relevant information about this complaint.*

*Having done so, my findings differ in some respects to our investigator's, so I need to give both parties an opportunity to comment before I make my decision final.*

*I'll look at any more comments and evidence that I get by 15 May 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.*

### **The complaint**

*Miss R complains Bank of Scotland plc ("BOS") hasn't dealt fairly with a dispute she raised over a payment she made on her debit card to a dental clinic in Turkey.*

### **What happened**

*The background to this case is well-known to all parties so I don't intend to go into detail about this, but in summary:*

- *Miss R arranged to have restorative dental treatment at a clinic ("CG") in Istanbul over two visits – one late in 2022 and the other early in 2023. Miss R was quoted, and paid, about £8,500 for the treatment, split across her BOS debit card (£2,789) and a credit card with a different card issuer (£4,570.05), with the remainder paid in cash. The treatment involved the fitting of dental implants. Accommodation and transfers in Turkey were covered by CG as part of the treatment package.*
- *Miss R had significant doubts during the process of treatment as things did not seem to be going as expected, and she was very unhappy with the end results. She reported, among other things: a misaligned bite, significant ongoing pain, and the disintegration of some of her new teeth on the flight home. There was some back and forth with CG, which offered to do further remedial work, but Miss R had lost faith in the company by this point and decided to pursue a refund.*
- *On 12 January 2023, Miss R contacted BOS to dispute the payment made on her debit card to CG. She also contacted her other card issuer, who have since refunded her the amount she paid on their credit card.*
- *BOS attempted what is known as a "chargeback" to try to reclaim the money from CG via the dispute resolution system operated and administered by the card network – Visa. BOS sent information and updates about this process to Miss R, but it appears some or all of these were sent to an online portal which Miss R says she was unable to access for the entire duration of the process. As a result, she says she had numerous calls with the bank, and was given incorrect or incomplete information on some of these calls.*
- *CG opposed the chargeback, arguing that it had carried out the service Miss R had paid it for. BOS was unconvinced by the evidence CG had provided and escalated the chargeback to a stage called "pre-arbitration" on 23 March 2023. On 14 April 2023 CG again opposed the chargeback, this time supplying various documents and photographs which it said proved it had carried out the treatment as agreed.*

- While this was going on, Miss R had emailed BOS on 12 April 2023 to say she was gathering further proof that CG had not carried out the treatment properly, and hoped to have this within a week.
- After reviewing the evidence supplied by CG, BOS didn't think it could pursue the chargeback any further. It wrote to Miss R on 20 April 2023 to tell her this, but also said that if she could supply more information within 10 days it would review its decision.
- Miss R did supply further information, on 28 April 2023. This consisted of a report from a dentist in the UK. BOS told Miss R on 3 May 2023 that it was now too late to take the chargeback further, prompting her to complain.
- BOS partially upheld Miss R's complaint. It felt there had been some service failings on its part meaning that Miss R had needed to keep calling for updates, for which it paid £40 compensation. However, it stood by its decision not to continue the dispute/chargeback any further.

Dissatisfied with this response, Miss R brought her complaint to the Financial Ombudsman Service for an independent assessment. One of our investigators looked into the complaint, and came to the following conclusions:

- BOS had to follow the rules set by Visa for chargebacks. These rules included strict time limits for making representations or providing evidence.
- BOS had initially raised a chargeback for Miss R, and had then escalated to the next stage when it felt CG hadn't provided sufficient evidence to support its position. BOS hadn't escalated to the final stage (arbitration). This hadn't been unreasonable in the circumstances, and Miss R had submitted her additional evidence too late. This additional evidence wouldn't have changed the outcome as Visa would not have accepted it at the arbitration stage.

Miss R asked to appeal our investigator's assessment and so the case has been passed to me to decide. Miss R highlighted when responding to our investigator that she had repeatedly been misadvised by the bank.

### **What I've provisionally 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 a consumer pays for goods or services using a debit card, and something then goes wrong with the purchase, they may approach their debit card issuer for assistance. The card issuer may be able to help in obtaining a refund via the dispute resolution mechanism administered by the card scheme – which is often known as chargeback.

As our investigator observed, the dispute system has rules which are made by the card scheme to which the consumer's card belongs. In Miss R's case, that was Visa. The rules cover various things, some of the most important of which are the timeframes which are applicable to the chargeback process, the reasons a chargeback can be raised, and what evidence needs to be supplied.

Chargebacks are not guaranteed to succeed. They can be opposed by the merchant which received the payment, after which the card issuer can escalate the chargeback to the "pre-

arbitration” stage. If the merchant still opposes the chargeback, the issuer can escalate the dispute to the final stage where Visa itself will rule on it. This stage is called “arbitration”.

While there is no general consumer right to demand their card issuer attempt a chargeback on a payment they’ve made, I would expect the card issuer to attempt one, as a matter of good practice, where it appears that to do so would be compliant with the card scheme’s rules and have a reasonable chance of succeeding. I would also expect a card issuer to conduct the chargeback process in a competent way, without making errors.

BOS did attempt a chargeback for Miss R, under the Visa reason code “Not as Described or Defective”, on 22 February 2023. Miss R had provided a detailed account of what happened, which I think was enough for the bank to conclude a chargeback would have a reasonable chance of success. It credited Miss R’s account temporarily while the process was ongoing.

Under the Visa rules, CG had 30 days to respond to BOS. It responded within that window, on 16 March 2023. BOS then had another 30 days to escalate to the pre-arbitration stage. It appears BOS decided to escalate the dispute on 23 March 2023 as it felt the information it had already submitted in support of a refund for Miss R had not been adequately addressed by CG. It sent the following message to CG’s bank:

“We are initiating Pre-Arbitration because you have failed to remedy our chargeback. You have not provided any documentation which shows the service was as described to our customer prior to point of sale. Our customer has two cracked teeth which was not fixed. Our customer still disputes this transaction. Our chargeback stands.”

Once again, CG (or rather, CG’s bank) had 30 days to respond. It did so on 14 April 2023. This time it attached large amounts of documentation which it said proved “that services totally matched what was described and cardholder fully benefited from disputed transaction”. CG’s bank also argued that BOS’s chargeback had “failed to meet technical requirements of mentioned reason code”.

The documents provided by CG included before and after photos, receipts, invoices and hotel bills, along with a written rebuttal of Miss R’s claims. This rebuttal included an argument that Miss R had “failed to resolve with the Merchant before initiating the dispute”.

It appears BOS decided, having read CG’s response, not to pursue the chargeback to arbitration.

Before writing this decision, I asked BOS to expand on the reasons why it hadn’t taken Miss R’s case to arbitration. I noted that the relevant part of Visa’s rules suggested that the documents CG had provided at the pre-arbitration stage may not have been accepted by Visa during arbitration, as the rules required that they be submitted in response to the initial chargeback, not the pre-arbitration attempt. It therefore appeared to me that Visa would not have taken into account this information.

BOS didn’t comment on whether it thought Visa would or wouldn’t have considered the extra documents CG provided in response to the pre-arbitration attempt. However, BOS repeated that it couldn’t submit the extra information Miss R had provided later because Visa would not have considered it, and noted that CG had been offering to correct the dental work for Miss R but she was unwilling to allow it to do so. I understand the bank to mean here that because CG had made this offer, this would have presented an obstacle to the chargeback succeeding at arbitration.

I agree with BOS that the Visa rules state that new information cannot be submitted during the arbitration stage:

*“A Member must not submit documentation or information to Visa that was not previously submitted to the opposing Member.”*

*This means that although Miss R was gathering further evidence that CG had not properly undertaken the services she'd paid for, this would have made no difference to the outcome of the dispute as it would not be something which could be submitted to Visa under the rules.*

*It also appears to be the case that Visa would not have accepted the additional documentation sent by CG in response to BOS's pre-arbitration attempt. The rules say, in chapter 11.2.3, that the issuer (BOS) is permitted to provide additional information at the pre-arbitration attempt stage, and the acquirer can only respond to say they accept or decline the pre-arbitration attempt.*

*However, there is also the other main point BOS has made which I must consider – which was that CG was still offering to carry out remedial work – and that this may have prevented the chargeback from being successful. The Visa rules require that a cardholder must “attempt to resolve the dispute” with the merchant first, before pursuing a chargeback. I think Miss R did make some attempts to resolve the dispute with CG. When things went wrong in Turkey she delayed her return to the UK in order to have remedial work completed. She then engaged in follow-up dialogue with CG from the UK, but she was unhappy with how CG was handling the situation and so she tried to pursue a refund via BOS instead.*

*I realise that it is not possible to determine any decision Visa would have reached had BOS escalated the chargeback to arbitration. On balance, however, I think the prospect of Miss R's dispute being successful was at best rather uncertain. The dispute involved a complex medical procedure carried out abroad, and Visa would have been unable, under its rules, to consider the expert medical evidence Miss R later obtained. It was clear from the responses CG gave to the initial chargeback and the pre-arbitration attempt that it was determined to fight its corner, and I do not think it would have backed down had BOS escalated the case to arbitration. I also think it's possible Visa may also have considered that the fact CG was still saying that it would offer further treatment, weighed in CG's favour.*

*While Miss R may have lost an opportunity to have her case be escalated to arbitration, I am unconvinced that, had BOS escalated the case in this way, it would have resulted in Miss R getting her money back. In light of this, I don't think it would be fair to conclude that BOS should treat Miss R as though the chargeback had been successful, by refunding the money paid on the BOS debit card.*

### Customer Service

*Miss R says she was given incorrect information by the bank on multiple occasions. In particular, she's referred to being reassured she had more time to provide further information when this wasn't the case, and in general not being made aware of the timescales which applied.*

*I can see Miss R was advised in writing by the bank on 20 April 2023 that they were no longer pursuing the dispute, but that she could submit further information within the next 10 days. This was misleading for two reasons. Firstly, as explained above, it would not have been possible at this stage to provide further evidence under Visa's rules. Secondly, while it was correct that BOS had 10 days from the date of CG's response to escalate the matter to arbitration, by the time BOS had written to Miss R there were only four days left.*

*Miss R says she was repeatedly given incorrect information about how much time she had to submit further evidence on the phone. Given the bank was providing incorrect information in writing, I think it's likely it was providing similarly incorrect advice over the phone. I don't*

*think this incorrect information affected the ultimate outcome of the chargeback, but it has clearly been a source of ongoing frustration for Miss R, as well as wasted time.*

*BOS has paid Miss R £40 compensation to reflect the impact of its customer service failings, but I think an amount of £150 in total would be fair in the circumstances.*

#### Other matters

*I note Miss R's other card issuer appears to have accepted, in a letter of 4 December 2023, a claim under section 75 of the Consumer Credit Act 1974 in connection with the same purchase. Section 75 doesn't apply to debit cards, which is why BOS didn't consider this avenue for Miss R.*

*As mentioned earlier, Miss R's other card issuer refunded the amount she'd paid on their card only. However, section 75 covers not just the amount a person has paid on their credit card – it can also cover amounts paid via other means, such as bank transfers or amounts paid on other cards. So Miss R may wish to go back to her other card issuer to make a claim for the remainder of the money she paid to CG. I am unable to comment on whether such a claim would be likely to be successful, I mention it only to highlight it as an avenue Miss R may want to explore.*

#### **My provisional decision**

*For the reasons explained above, I intend to uphold Miss R's complaint in part and direct Bank of Scotland plc to take the following action:*

- *Pay Miss R £110 additional compensation for the frustration, annoyance and inconvenience caused as a result of it advising her incorrectly multiple times about the time limits which applied to the chargeback process.*

*I now invite both parties to the case to provide any further submissions they would like me to consider. I will consider any further submissions I receive from either party by 15 May 2024. I will then review the case again.*

Will Culley  
**Ombudsman**