

The complaint

Mr V complains that Nationwide Building Society won't reimburse money he paid to a third party using his credit card for an event that didn't go ahead.

What happened

Mr V used his Nationwide credit card as part-payment to A for the hire of a venue and facilities connected with a family wedding. The arrangements required a pre-wedding event, required to take place within a couple of days of the wedding itself. Mr V and his wife (in whose name the booking was made) paid a total of £1,250 as a deposit using their respective cards.

Unfortunately, the booking fell within the period when the country was affected by the Covid-19 pandemic restrictions. The family were unable to go ahead with the original arrangements or a rearranged date. When they were able to successfully rearrange the wedding date, A's venue was unavailable during the two-day window.

Mr V sought to recover his deposit from A, saying the contract had been frustrated. But A said the deposit was non-refundable and that it went towards costs it incurred in connection with the booking arrangements. A said that this was consistent with Competition and Markets Authority ("CMA") guidance issued in relation to contracts affected by Covid-19, which Mr V had referenced in his correspondence. A offered to issue Mr V a credit note to use against a future booking. But Mr V said he no longer required use of the venue

As Mr V paid using his Nationwide credit card, he approached Nationwide to get the money back. He felt the matter should be covered by the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75"). But Nationwide said it was only liable where there had been a misrepresentation or breach of contract. It didn't consider what had happened amounted to either of these things. Nationwide went on to say that it had liaised with A, who was still willing to offer alternative dates or a credit note. Mr V was unhappy with the situation and complained to Nationwide, and subsequently to us.

Our investigator didn't think Nationwide had dealt with Mr V unfairly. It had received his section 75 claim and set out why it didn't consider it had any liability to him. The investigator examined the terms of the contract with A. He noted that the circumstances in Mr V's case were such that A hadn't made any misrepresentation or breached its contract. And while Nationwide didn't appear to have attempted to recover the payment using the chargeback process, the investigator didn't think the circumstances suggested such a claim would have been successful. A had remained willing to provide its services and this would have been a valid defence under the chargeback process.

Mr V didn't accept the investigator's conclusions. He felt that the prevailing circumstances of the pandemic made it unreasonable for A to rely on the non-refundable nature of the deposit. He also pointed to the specific event the venue had been booked for, and said that because A's venue wasn't available at the material time ahead of the revised wedding date, a future booking or credit note was of no use. He has asked for this review.

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 appreciate why Mr V's upset. He and his wife have paid money for something they haven't been able to make use of. They're currently out of pocket and their strength of feeling is clear. That said, I can only fairly expect Nationwide to reimburse the money if it was in some way responsible for Mr V's loss – perhaps due to the way in which it handled his request for assistance, or because of some other liability it has accrued.

Mr V used a credit card to pay A in relation to the booking. The overall cost meets the financial limits of section 75. In simple terms, section 75 means if Mr V has a claim for breach of contract or misrepresentation against A, he has the same claim against Nationwide. I can see that Nationwide recognised this potential liability. However, it concluded that A hadn't misrepresented the position or breached the contract. As such, Nationwide didn't accept it had any liability to Mr V.

I accept Nationwide's position in respect of its potential liability under section 75. Indeed, I note that Mr V didn't originally seek to argue that the contract was breached; rather, that it had been frustrated – it was incapable of being performed – due to the pandemic restrictions. I fully recognise the impact those restrictions had on the way Mr and Mrs V had intended to use the venue. The restrictions on large gatherings that were imposed meant they didn't want to go ahead with the arrangements on the original dates. They were subsequently unable to find a date when A's venue was available that would correspond with the revised wedding date that was set.

But that isn't the same as saying A failed to perform its contractual obligation. It appears to have been willing throughout to offer alternative dates. Mr V has described that those dates didn't correspond with the new wedding date. But that was something Mr V would have been able to take into account when making the revised wedding arrangements. The fact the new wedding date meant the pre-wedding event couldn't take place at A's venue within the timescale Mr V had is unlikely to amount to a breach of contract on A's part.

The government guidance relating to the pandemic restrictions made no provision for customers to be entitled to a refund in the circumstances at play here. It's possible that following the government advice might amount to the contract being frustrated rather than breached, as Mr V has suggested. That isn't clear-cut, given that it might well have been capable of being performed at a later date, had Mr V co-ordinated the new wedding date with the venue's availability. But I don't need to consider this aspect further in the context of a section 75 claim, as this doesn't cover frustrated contracts.

With this in mind, I don't believe it would be right for me to find that Nationwide treated Mr V unfairly in declining to meet the section 75 claim. That's not to say that Mr V might not be able to persuade a court that he should receive a refund, depending on the arguments made. As I understand it, the position taken by A hasn't been tested in a court of law. It's not for me to venture an opinion on any prospect of success Mr V might have should he seek to progress a legal claim. Given the lack of clarity around the subject matter (and the possible costs involved) Mr V should take independent legal advice if this is something he intends to pursue.

The other mechanism available to Nationwide to recover Mr V's payment to A was through the chargeback process, which enables – in certain circumstances – cardholders to resolve disputes they have with suppliers. To do this, a card issuer needs to instigate a chargeback claim, under a suitable reason code, submitting what it has been told in evidence.

But the rules under which Nationwide is able to make a chargeback claim also permit A to defend it. And A had already made its position clear to Mr V in his initial efforts to obtain a refund of the deposit money. It said that Mr V wasn't entitled to a refund, referencing the CMA guidance and relevant law on frustrated contracts. I can't see why A would have taken a different stance had Nationwide sought to pursue the matter via chargeback, and so I find Mr V was not disadvantaged by the fact Nationwide didn't look to pursue a chargeback.

My final decision

I do sympathise with Mr V and his family's situation, and I hope he's able to reach a fair resolution with A. But it isn't within my power to resolve that dispute.

Having reviewed matters I don't think there's any basis on which I could say Nationwide Building Society has dealt with Mr V in a way that might suggest it would be fair for it to refund him, or pay him compensation. So my final decision is that I can't uphold his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 10 February 2023.

Niall Taylor
Ombudsman