

## The complaint

Miss S complains that Nationwide Building Society didn't do enough to assist her in recovering money she paid using her credit card for flights that she was unable to take due to the Covid-19 pandemic.

## What happened

Miss S and her partner used a third party booking website "K" to arrange a series of flights with different airlines for a trip they planned to take in April 2020. Miss S used her Nationwide credit card to pay K, who booked the flights she'd selected from its website. In total, Miss S paid £1,619.63.

Unfortunately, the travel plans were affected by the Covid-19 pandemic, which meant Miss S and her partner were prevented from entering their intended destination. Miss S approached K for assistance. K offered Miss S two options: an immediate refund of £87.76; or on payment of an 'assisted refund' fee of £17.55, K would try to secure as much as it could by way of refund from the respective airlines.

Miss S didn't feel either option was appropriate. She turned to Nationwide to see if it could help, providing details of her flight arrangements and cancellations and the response she'd received from K. After several weeks, Nationwide got in touch with Miss S to ask for information about the dispute to progress a chargeback claim. Miss S responded within a few days, but heard nothing further for another month, at which point she complained.

By way of acknowledgement and apology for the delay, Nationwide paid Miss S £25. It subsequently made a temporary credit to Miss S's account for the money she'd paid K, pending any response it received to the chargeback. K responded to Nationwide defending the claim. However, Nationwide failed to explain this to Miss S when she asked, instead leading her to believe the claim hadn't been defended and that K was now out of time to do so. Believing the dispute to have been resolved in her favour, Miss S arranged for the credit balance on her card to be transferred to her current account.

A couple of weeks later, Nationwide reversed the temporary credit, leaving Miss S owing a balance on her credit card. Miss S complained again. Nationwide acknowledged it had given Miss S the wrong information and paid her £50 compensation, proposing that in addition it would waive interest on the reversed transaction for two months. Miss S remained unhappy and referred her complaint to us.

Our investigator didn't think Nationwide had dealt with Miss S fairly. She was satisfied that Miss S had raised her claim in line with the card scheme chargeback rules, and that based on what Miss S had submitted from the outset, Nationwide should have progressed the claim in a timely way. The investigator felt the way Nationwide had handled matters had disadvantaged Miss S, and that Nationwide should have pursued the claim more robustly in light of K's defence.

The investigator noted one of the flights had taken place – albeit without Miss S and her partner – and that this would not have been recoverable under chargeback. She considered

it reasonable that Nationwide resolve Miss S's complaint by paying her £1,507.77 (being the remaining amount that it could have sought to recover via chargeback) with interest.

Miss S was happy to resolve matters on this basis. But Nationwide didn't accept the investigator's recommendation. It said it didn't progress the claim to arbitration by the card scheme as K had provided sufficient information to show it was acting in line with its terms and conditions. Nationwide also cited examples of cases it had progressed to arbitration – including one involving K – that were unsuccessful due to being out of time. The investigator wasn't persuaded to change her view and so the matter has been passed to me for 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.

Because Miss S paid K using her credit card there are two possible ways in which Nationwide might be able to assist her to recover the money. As our investigator noted, these are – depending on the underlying circumstances – by making a claim directly against Nationwide under the connected lender liability provisions of section 75 of the Consumer Credit Act 1974 ("section 75"), or through the card scheme's chargeback process.

The way in which Nationwide handled a section 75 claim isn't the subject of Miss S's complaint. For the record, I can see the potential difficulties in making such a claim, given the separate contracts that were created between Miss S, K and the respective airlines. But I don't think it's necessary for me to go into detail on that issue. I say this because in relation to the way Nationwide handled the chargeback, there is sufficient evidence to persuade me that it is appropriate that Nationwide reimburses Miss S. I'll explain why.

It's generally good practice for a card issuer to attempt a chargeback where the right exists in the card scheme rules and there's a reasonable prospect of success. That means the circumstances of a dispute affect whether it would be appropriate for Nationwide to raise a chargeback. Here, the reasons that might have been used for a chargeback were that the agreed services weren't provided or that a credit that was due wasn't received (that is, a refund that was due wasn't paid).

Nationwide's position as I understand it is that a) the terms and conditions of the agreement between Miss S and K were limited in respect of the services K was providing – K's obligation was to make the bookings as Miss S had selected and forward her payment; and b) even if it had progressed the chargeback claim further than it did, previous experience suggested it would be determined to have been raised outside the card scheme timescales.

In her initial assessment our investigator highlighted that the way chargeback operates doesn't necessarily sit entirely square with a claim brought under contract. There is good reason for this, not least because the chargeback system is designed to deal with disputes between card issuers and merchants (or merchant acquirers). With this in mind, the card scheme applicable here – Visa – provides that K is the merchant of record in this scenario.

That means K is responsible for dealing with a claim relating to provision of goods or services. I understand that to be the case whether or not the merchant itself is contractually obliged to provide them. Presumably this is – among other things – to assist with addressing the difficulty a card holder might otherwise have in recovering payment the merchant sent on to a third party, and the merchant being better placed to recover from that third party.

This being the case, I can see a situation in which K's own terms and conditions might well be insufficient to defend a chargeback claim when flights for which it has taken payment by

card do not go ahead. Our investigator established that only one of Miss S's flights took place, which is supported by the fact that K offered refund options.

The reason the flights didn't take place is, strictly speaking, not particularly important for the purposes of this chargeback claim. I'm prepared to accept that the Covid-19 pandemic had an impact on the airlines in question. Be that as it may, in those circumstances where an agreed service cannot be carried out, the usual position is that the card scheme rules will require the merchant to accept the chargeback and the cardholder to be reimbursed.

With this in mind, I'm satisfied there was a reasonable prospect of the chargeback claim being successful had Nationwide elected to challenge the defence K submitted. In respect of Nationwide's second point, it doesn't appear that the timescale was raised as part of K's submissions. But even if this were something the card scheme arbitration panel might have taken into account in determining the claim, it is evident that Miss S raised her claim in a timely way and that Nationwide had all the information it needed to pursue the chargeback claim well within the 120-day time limit.

Given that any delays in submitting the claim were on Nationwide's part, rather than down to Miss S's actions, if the claim had been rejected because it was raised out of time this would provide more reason for Nationwide to accept responsibility, not mitigate its responsibility.

For these reasons I consider Nationwide's handling of Miss S's claim to have fallen short of what I would consider to be a reasonable standard. While it has paid her modest compensation to acknowledge this, I don't think that goes far enough. Because of those shortcomings, Miss S was prevented from recovering her money via chargeback when it appears she had a reasonable prospect of doing so. It follows that I share the investigator's view that the fair way to resolve this complaint is for Nationwide to reimburse Miss S the money for the flights that didn't take place, along with interest on that sum.

### **My final decision**

My final decision is that to settle this complaint, Nationwide Building Society must, within 28 days of receiving Miss S's acceptance of this decision, take the following steps:

1. pay Miss S £1,507.77
2. pay interest on the amount in 1. at 8% simple annually, from the date it reversed the chargeback to the date of settlement. If Nationwide deducts tax from this interest payment, it should – if she requires it – provide Miss S with the appropriate tax deduction certificate
3. refund any interest it charged Miss S on her credit card account in respect of the reversed chargeback

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 14 February 2023.

Niall Taylor  
**Ombudsman**