

The complaint

Mr C complains Nationwide Building Society (“NBS”) won’t refund a deposit he paid for his daughter’s wedding dress.

What happened

Mr C’s daughter was going to get married and she ordered a wedding dress from a shop I’ll call “B” in February 2019. Mr C used his NBS credit card to pay a deposit for the dress, of £825. The wedding had been due to take place in June 2020 but it was postponed until the summer of 2022 due to the COVID-19 pandemic.

In the meantime, B had got into financial difficulties and was unable to supply the wedding dress. This became apparent in May 2022. Mr C was unable to get the deposit back from B and so he contacted NBS on 9 June 2022 for assistance.

NBS said it couldn’t help. In short, it said this was because it was unable to claim a refund via the Visa chargeback scheme due to the time which had passed since the purchase, and Mr C didn’t have a valid claim under section 75 of the Consumer Credit Act 1974 (“CCA”) because his daughter had ordered the dress, not him.

Mr C complained about NBS’s decision but it stood by what it had said. Dissatisfied with this response, Mr C referred the matter to the Financial Ombudsman Service for an independent assessment.

One of our investigators looked into the matter. She came to essentially the same conclusions as NBS. She noted Visa had set a time limit of 540 days from the date of a transaction, in which chargebacks had to be made. Mr C had contacted NBS outside of this window. In terms of the section 75 claim, there was no debtor-creditor-supplier (“DCS”) agreement which allowed Mr C to make a claim against NBS. His daughter had bought the dress and he had paid for it, but it was she who had the contractual relationship with B.

Mr C was not convinced by our investigator’s findings. His research had indicated the chargeback time limit was 120 days from when the dress should have been received, and he had contacted NBS well within that time. He had also read that buying gifts was a grey area and that if he had got the benefit of the purchase (which he considered that he had – vicariously through his daughter) then he should be covered.

Ultimately, no agreement could be reached and Mr C asked for his complaint to be reviewed by an ombudsman. So the matter has been passed 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.

When someone pays for something using their credit card, and something goes wrong, there’s no general obligation on the credit card company to provide a refund or assist in any

way. However, the credit card company may have a legal obligation to their account holder under section 75 of the CCA, or be able to help through the dispute resolution mechanisms administered by the card schemes (known as “chargeback”).

Section 75 of the CCA gives a legal right for the account holder (the “debtor”) to claim against their credit card issuer in respect of breaches of contract or misrepresentations by a supplier of goods or services, so long as certain conditions have been met.

Chargeback allows for a refund to be made of money paid with a credit or debit card in certain scenarios, such as when goods have been paid for and not received. A consumer cannot insist on their card company attempting a chargeback, but I would expect it to attempt one, as a matter of good practice, if there was a reasonable prospect of succeeding and to do so would be compliant with the rules of the card scheme to which the card belongs (most commonly, Mastercard or Visa).

The underlying dispute in Mr C’s case could hardly be more straightforward. An agreement was made and a deposit was paid to B for a wedding dress to be provided at a certain time, and B neither provided the dress nor refunded the deposit paid. This is a typical scenario where a chargeback would have a reasonable prospect of succeeding, and it’s a scenario which can be covered by section 75 (i.e. a breach of contract).

So why did NBS say it was unable to help via a chargeback or a section 75 claim? And was it right to say this? I will deal with each avenue separately.

Chargeback

As our investigator noted, chargebacks are subject to the rules set out by the relevant card scheme whose logo appears on the card (in this case, Visa). The card schemes are not within the jurisdiction of the Financial Ombudsman Service and we are unable to require them to run their chargeback schemes in a particular way. However, we can consider whether a card issuer has applied the rules correctly and conducted the chargeback process in a competent manner.

In this case the window of time in which a chargeback could be attempted under the card scheme rules has been a key point in dispute. The current version of the Visa rules is published online¹, and while it would have been an earlier set of rules which would have applied at the time Mr C contacted NBS, having compared the two I can see they are the same in all material respects.

On the question of time limits in scenarios where goods or services have not been received, the rules say the following:

“A Dispute must be processed no later than any of the following:

- *120 calendar days from the Transaction Processing Date*
- *120 calendar days from the last date that the cardholder expected to receive the merchandise or services*

...”

After the second bullet point is a link to a footnote which provides the following additional restriction:

¹ <https://usa.visa.com/content/dam/VCOM/download/about-visa/visa-rules-public.pdf>

“Not to exceed 540 calendar days from the Transaction Processing Date”.

This means there is effectively a “long stop” under Visa’s rules which prevents a chargeback of this type from being made more than 540 days from the date of the transaction. Given the original transaction took place in February 2019 and Mr C did not approach NBS until June 2022, unfortunately he was squarely outside of the window in which a chargeback could have been attempted.

Mr C has referred to the idea of exceptions being made to the time limits given the disruption and problems caused by the pandemic. This was something which it appears Visa considered. In a (non-published) FAQ document dated 21 April 2020, the following question and answer appeared:

“Will Visa make any exceptions or issue any waivers for dispute time frames for clients?”

No. Upon thorough review of the dispute process, we have decided not to change the time frames for dispute processing or grant exceptions/waivers.”

In light of the above, I have to conclude that NBS was not wrong to decline to pursue a chargeback for Mr C. It would not have been possible of it to do so in compliance with the card scheme’s rules.

Section 75

When someone makes a payment on their credit card, in order to make a valid section 75 claim against their credit card issuer they need to have used the credit card to pay a company they have a claim against for breach of contract or misrepresentation. Section 75 gives the debtor (the credit card account holder) the same claim against their credit card issuer as they would have against the supplier of goods or services, so long as that claim is for breach of contract or misrepresentation.

This is because section 75 itself is worded in the following way:

“If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

The debtor in this case is Mr C, because he paid the deposit for the dress using his credit card account. The transaction financed by the credit card account was the order of the wedding dress, and the supplier was B, the shop. Section 75 says that it is the *debtor* who needs to have a claim against the supplier in respect of a misrepresentation or breach of contract.

A parent paying for part of their child’s wedding – be that a venue or a dress or something else – is a common enough scenario. But the difficulty this presents for Mr C’s claim against NBS is that he doesn’t appear to be a party to the contract with B. His name doesn’t appear on it (his daughter’s does) and the dress is clearly being made for his daughter, to her measurements and personalised to her, following a consultation with B. Mr C may have provided the money to buy the dress, and it may be correct (as Mr C has suggested) that bridal shops always put the bride’s name on invoices, but in my view it is difficult to find that it was anything other than his daughter’s purchase, for which she was the contracting party. I find Mr C was not a party to the contract with B.

I appreciate Mr C's interest in the purchase going well for his daughter and in her wedding being a success, and the vicarious enjoyment he would have experienced, means he would have felt close to the transaction. But that doesn't make him a party to the contract. Similarly, Mr C's suggestion that the purchase was a gift (and therefore his purchase) doesn't reflect the circumstances. His daughter made the purchase from B. The gift was providing the funding for that purchase.

What all of this means is that Mr C does not have a claim against B in respect of a breach of contract. His daughter may have such a claim, but he as the debtor needs to have a claim in order for him to be able to hold NBS liable under section 75 of the CCA. As he does not, he is unable to require NBS to refund the deposit, and I find NBS did not act unreasonably in declining to honour his section 75 claim.

My final decision

For the reasons explained above, I do not uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 June 2023.

Will Culley
Ombudsman