

The complaint

Ms O complains about the way National Westminster Bank Plc (“NatWest”) handled her request for a refund in respect of a holiday she paid for with her NatWest credit card.

What happened

In June 2022 Ms O bought a combination of flights, accommodation and transfers from a supplier I’ll call B at a cost of £898. She paid B using her NatWest credit card. The holiday was due to take place between 17 July 2022 and 24 July 2022.

Ms O said that in early July 2022 she spoke with a representative of B and was told one of her flights had been cancelled. She said B told her it could not offer an alternative flight at the same airport for the same price and the only alternative was a flight from another airport far away from where she lives. Ms O said B told her that if she wanted a refund, she would need to put a cancellation request in writing.

Ms O said she did this on the same day she spoke with B but didn’t receive a refund. Having not heard from B, Ms O asked NatWest to step in and help.

NatWest said it couldn’t help Ms O. It said she hadn’t provided enough evidence that her flight was cancelled so it didn’t think it could recover the money from B via a process known as chargeback.

Dissatisfied, Ms O referred the matter to this service.

The investigator didn’t think NatWest had treated Ms O unfairly. She didn’t think the evidence supported a conclusion that B cancelled Ms O’s holiday. So, she didn’t think a chargeback or a claim under Section 75 Consumer Credit Act 1974 would have succeeded.

Ms O disagreed and asked an ombudsman to review her complaint.

I contacted NatWest in September 2023. I explained that it appeared to me, on the balance of probabilities, that Ms O had been told her flight was cancelled and was acting on the instruction of B when she emailed her cancellation request to it in July 2022. I asked it to consider its liability to Ms O under section 75 as it appeared B was contractually obliged to provide a refund in circumstances where the holiday could not be provided.

NatWest said it still didn’t think there was enough evidence of breach of contract. It said:

“The S75 process is not a “balance of probabilities” it’s not a case of what is or isn’t probable it’s a case what is proven. The customer has not proven they are due a refund under the terms and conditions or it was cancelled due to a misrepresentation of those terms. There’s no doubt if the flights were or were not cancelled, it’s a case of the customer needs to prove that they misrepresented the chance of a refund for the flights”.

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 am looking here at the actions of NatWest and whether it has acted fairly and reasonably in the way it handled Ms O's request for help in getting her money back. This will take into account the circumstances of the failed trip and how the supplier has acted, but there are also other considerations, such as the scheme rules a bank has to follow and its own obligations.

There are two main ways a bank can help a customer to recover money paid to a supplier who hasn't provided what was promised. It can try to recover the money from the supplier through a process known as chargeback. Or it can assess whether its customer has a valid claim under Section 75 Consumer Credit Act 1974 ("section 75").

Section 75

Section 75 provides that subject to certain criteria the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. So, given her claim here, for me to find that NatWest should have refunded the cost of the flights to Ms O, I'd need to be satisfied that there has been a breach of contract by B.

My starting point is therefore the terms of the contract between Ms O and B. This set out the following about what should happen if B was unable to supply the contracted services to Ms O:

"5. Cancellation by Us

We may cancel the event() or any part of it:*

for safety reasons if we or our supplier(s) regard adverse weather conditions or other safety concerns as unacceptable and which cannot reasonably be overcome; If we reasonably believe that you may cause harm or damage to our reputation or to the reputation of our suppliers or to property belonging to our suppliers; If a supplier or suppliers are unable to host the event for any reason; If changes you wish to make to the booking mean it is uneconomical or impractical to hold the event. If we cancel the whole of the event, we shall use our best endeavours to rearrange the event on a mutually convenient date or provide a refund to you of the cost to us of the event. Save as above we shall be under no further liability to you for cancellation of the event or any part of it...

7. Failure to provide an event

If, due to reasons beyond our control, an event is unable to take place due to (but without limitation); closure of premises, the ceases of trading, a change in supplier management, weather restrictions, we will provide you and your group with an alternative event and if this is does not prove possible, a refund to you of the cost to us of the event"

*event is defined within the terms as "any holiday, accommodation, activity or function organised or advertised by (b)". Given Ms O booked a combination of flights, accommodation and transfers, event in this case would appear to mean the holiday as a whole.

I note that when setting out the refund, both clauses refer to 'the cost to (B) of the event'. There is no further explanation of what the cost to B of the event would be in the terms. In the absence of such, and on the reasonable assumption that part of B's role as agent was to pass on the money Miss O paid it to the relevant suppliers, I find a reasonable interpretation of cost to B to be the sum that Ms O paid to B.

I have therefore considered whether the circumstances of Ms O's complaint meant that B had either cancelled or failed to provide her holiday. If this was the case, it appears that B was contractually obliged to provide either an alternative or rearranged event, or if those were not possible, a refund to Ms O. So, if it didn't do this, it might mean B was in breach of contract to Ms O and she could reasonably have held NatWest liable for that breach of contract under section 75.

Ms O has said that B told her on the phone that her flight had been cancelled and that it could not provide an alternative flight from the same airport at the same cost – only a flight from an airport that she said was too far away for her to travel to. Ms O's email to B of 5 July 2022 sets out quite clearly that she had spoken to one of its representatives on the phone (who she names in the email), had been told her flight was cancelled and had been told that she would need to initiate a cancellation herself if she wanted a refund.

I question why Ms O would have sent such an email if that were not the case and it seems unlikely to me that there were alternative reasons why she sent it. A number of things persuade me of this.

Firstly, I've looked at historical flight information online for Ms O's flight number. This showed it was a regular bi-weekly flight with records of it landing in consecutive weeks before and after Ms O's scheduled flight, but not on the day of it (i.e. 26 June 2022, 3 July 2022, 10 July 2022, 24 July 2022). So, I think this suggests, (consistent with what Ms O said she was told by B), that her outbound flight did not in fact go ahead.

Secondly, B contacted Ms O after the cancellation explaining that it had "sent email to our suppliers for cancellation and waiting for the refund from them". While it's not implausible that B would have done this if Ms O had cancelled unprompted, this seems unlikely given Ms O did not appear to have been entitled to a refund from it if she cancelled. So, I question why B said it would try to get a refund for her, if the facts were not, as Ms O has described them, that B told her to cancel because it couldn't provide the flight any longer.

With the above in mind, it seems to me on the balance of probabilities that Ms O was told by B that one of her flights had been cancelled, told that an alternative flight from the same airport was not available at the same price, and told that she'd have to put a cancellation request in writing if she wanted a refund.

Ms O's flight was from London Luton airport. The flight she said she was offered by B when she spoke with it was flying from Manchester. Given the distance involved between those two airports, I don't think this could be said to be an 'alternative' or a 're-arrangement' – in the sense it meant B was not obliged to offer a refund under Clauses 5 or 7 of its terms.

Were a court to have interpreted these clauses, it seems a reasonable interpretation might have been that any alternative or rearrangement would be reasonable when compared with the original event booked. Were that not the case, B could have offered any manner of outrageous or unsuitable alternatives and not been required to pay a refund if they were not accepted by the customer. And that doesn't seem in keeping with the spirit of clauses 5 or 7, or fair.

I find therefore, that even though Ms O submitted a cancellation and refund request in writing

to B on 5 July 2022, B had either effectively cancelled her holiday before this, (when it told her the flight was cancelled), and was contractually obliged to pay her a refund under clause 5, or the event was unable to take place and B was contractually obliged to pay her a refund under clause 7. Either way it appears Ms O was simply reaffirming her right to a refund in the contract within her communication to B on 5 July 2022.

In failing to either arrange an alternative or provide a full refund it appears B was therefore in breach of contract.

I've also considered the Package Travel and Linked Travel Arrangements Regulations 2018 ("PTR"). These set out that because Ms O booked a combination of flights and accommodation (or in other words a package), B was liable to her for the performance of the travel services included in the package contract.

Regulation 11 of the PTR set out that if B altered significantly any of the main characteristics of the package, including the provision of the flights and Ms O did not accept those changes, she was able to terminate the contract without paying a termination fee and was entitled to a refund of all payments she'd made to B.

It appears Ms O could reasonably have argued that the cancellation of the flight and/or offer of an alternative at a far-away airport were significant changes to the main characteristics of the contract. And Ms O's email to B on 5 July 2022 was a clear indication she did not accept the changes and that she wanted a refund – as was her right under the PTR.

The provisions of Regulation 11 were implied in Ms O's contract with B. So, a failure to provide a refund of everything Ms O had paid to B in those circumstances appears to have been a breach of those implied terms.

Thinking about all of this, I find NatWest treated Ms O unfairly by declining to meet her claim for a refund. To put this right, I think it should pay Ms O the cost of her holiday, plus interest at 8% simple from when it told her it had declined her claim until the date of settlement.

As I explained earlier, the other way NatWest could have recovered Ms O's money was via the chargeback process. Chargebacks are subject to the relevant card scheme rules and not necessarily a determination of the parties' legal rights. Because of this, it's not as clear that Ms O could have recovered her money via this process. And because I've concluded that NatWest should pay Ms O the cost of her holiday for other reasons, I've not considered this in any further detail.

My final decision

For the reasons I have explained I uphold Ms O's complaint. To put things right National Westminster Bank Plc must pay Ms O £898 plus 8% simple interest per year on that amount from 14 April 2023 until the date of payment*.

* If National Westminster Bank Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms O how much it's taken off. It should also give Ms O a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 26 October 2023.

Michael Ball
Ombudsman