

## **The complaint**

Mr H complains about Nationwide Building Society's response to his attempts to recover a debit card payment he made to a third party "A". Mr H is assisted in bringing his complaint by a claims management company "F".

## **What happened**

Mr H was in dispute with A over a timeshare resale contract he entered into in October 2020. He engaged F to assist him with the dispute. In October 2021 F attempted to make a claim against Nationwide for A's failure to perform its contractual obligations, referencing the connected lender liability provisions of section 75 of the Consumer Credit Act 1974.

Nationwide didn't respond directly to the claim until February 2022, following F's resubmission of the claim. It told F it had no record of receiving the original claim, and that it couldn't assist as section 75 didn't apply to a debit card transaction. F raised a complaint on Mr H's behalf, and in July 2022 Nationwide issued a final response.

In it, Nationwide reiterated that a section 75 claim couldn't be made. Nationwide's response noted that Mr H's use of his debit card provided for a chargeback claim to be made through the Visa card scheme. However, it went on to say that it was now outside the timescale to raise such a claim.

Our investigator acknowledged Nationwide's point that a section 75 claim couldn't be made in relation to a debit card payment. But she was satisfied Nationwide had received F's October 2021 email, and that Nationwide ought to have raised a chargeback claim in response to the dispute even if Mr H hadn't expressly asked it to do so. The investigator considered the email contained sufficient information to understand the nature of the dispute, and that it should have done more to assist at that point.

She found that in October 2021 a chargeback claim would still have been in time. And there was no indication that A had provided the agreed services or refund to Mr H. A had by then appeared to have ceased trading, so it was evident that the refund wouldn't be provided. The investigator concluded that, had Nationwide raised a chargeback claim in October 2021, it would most likely have resulted in recovering Mr H's money. She proposed that Nationwide reimburse Mr H the amount he paid (£5,111) with interest.

Nationwide didn't accept the investigator's findings. It asked for this review, saying that its chargeback team had reviewed the documents F had provided with its claim and that this would have been insufficient to raise a chargeback claim. Nationwide went on to say that if it had asked F for further information, it was possible the claim would have fallen outside the chargeback timescale. Nationwide attributed responsibility for matters to F, saying that it had been sending its emails to the wrong address and was ultimately responsible for delays.

## **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 read Nationwide's response to the investigator's assessment and carefully considered the timeline of events and email exchanges relevant to the dispute. Having done so, I don't consider it offers persuasive reasons for me to say that Nationwide dealt with Mr H's claim fairly. While Nationwide has referenced the email addresses F used, the fact remains that these were active Nationwide email addresses. Even if F should have known to use a different email address to submit the claim, Nationwide hasn't offered any explanation as to why it couldn't pass the claim – or any subsequent emails – on to the correct team.

Like our investigator, I'm satisfied that F's October 2021 email contained details of the dispute and was successfully delivered to Nationwide. It doesn't strike me as particularly onerous to expect that, if the email reached the wrong department or required further information, Nationwide would either respond directly to advise of the correct address to use or to say it needed more information to assist. It did neither of these things.

I'm also a little concerned that Nationwide has sought to reference the November email exchange with F as the point at which it was notified of the claim. For the avoidance of any doubt, for the reasons I've already stated my finding is that Nationwide was notified of the claim on 5 October 2021. Nationwide's email in November was from its Complaints team. It was seeking Mr H's personal information in order to log an expression of dissatisfaction, rather than to acknowledge receipt of any claim or obtain evidence to progress it.

At best, Nationwide's arguments as to F's actions might suggest some form of mitigation of its liability. But I'm not persuaded that would be appropriate. Nationwide could – and should – have done much more to assist with looking at and progressing the claim in a timely manner. Even by January 2022, Nationwide had the opportunity to handle the claim correctly by acknowledging the potential for a chargeback, as F had flagged in its email of that date.

I've seen nothing to indicate that Nationwide told F to get in touch with the debit card team (or provided details of how to do so) at any point until after the timescale had passed. I don't consider that was good enough. And I consider that the poor handling of the claim by Nationwide was the cause of any chargeback claim Mr H might have been able to make falling out of time.

The card scheme rules provide for a claim to be made within 120 days of the original transaction or, if later, the point at which agreed services fail to be provided. This is subject to an overall timescale (or long-stop) of 540 days from the transaction date.

Mr H's original payment was made on 14 October 2020. The agreement with A provided for it to fulfil its services to Mr H within 12 months or he would receive a full refund. But by the time Mr H made his claim in October 2021, it had become apparent that the timeshare hadn't and wouldn't be relinquished by the agreed date. It further appeared that A had ceased trading (I understand that A didn't respond to F's contact and that its website had shut down). So the relevant date for the purposes of a chargeback claim would be that it would need to be raised within 120 days of that point.

As I've already found, Nationwide was notified of Mr H's claim in October 2021. That was within the 120-day timescale in the card scheme rules (assuming a 12-month period from when Mr H had concerns that the contract would not be fulfilled, day 120 would have been no earlier than 2 February 2022). Looking at the contact Nationwide received from F on behalf of Mr H between October 2021 and 2 February 2022, I'm satisfied that there was sufficient time and opportunity for Nationwide both to have looked into the chargeback claim and to have sought more evidence from F if, as it has said, its chargeback team would have thought it necessary to do so.

I don't believe it would be right for me to reach a finding that, had Nationwide done this, F would have failed to respond to any such request. F didn't reply to Nationwide's Complaints team's email, but that doesn't mean a specific request for information to further its client's underlying claim would have gone unanswered. Given Nationwide didn't make that request, I don't consider it necessary for me to speculate about how F might have responded.

### **Putting things right**

A card issuer doesn't generally adopt liability for the actions of an independent third party simply because the customer paid using their debit card. But where a chargeback right exists and there's a reasonable prospect of success, as a matter of good practice (and as Nationwide will be aware, the long-standing approach of our service) I'd expect a card issuer to attempt to assist its customer by raising a dispute.

While that doesn't always mean the outcome of such an action will be in the customer's favour, I've no reason to think that a properly formed chargeback claim in the individual circumstances at play in Mr H's case would have been successfully defended by A or its merchant acquirer. With this in mind, I consider it reasonable to say that had Nationwide handled the claim more effectively, Mr H would not have suffered the loss he currently faces.

Because of this, I consider it fair that Nationwide compensates Mr H for that loss. It should pay him the amount he would otherwise have been able to recover through the chargeback, which is the £5,111 he paid using his debit card in October 2020.

To reflect the fact Mr H has been without the use of this money since the point at which he might reasonably have expected to recover it under the chargeback and the inconvenience he's experienced as a result, Nationwide should also pay him interest on this amount, calculated at 8% simple per year. Allowing a reasonable period of 90 days for additional claim information to be obtained and the claim to be determined, Mr H might reasonably have expected to obtain reimbursement by 4 January 2022. So this interest calculation should run from 4 January 2022 until the date Nationwide pays the settlement. Nationwide might be required to deduct tax from the interest element of this award. If Nationwide does so, it should provide Mr H with a tax deduction certificate should he request one.

### **My final decision**

My final decision is that I uphold this complaint. To settle it, I direct Nationwide Building Society to take the steps I've set out above.

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

Niall Taylor  
**Ombudsman**