

The complaint

Mrs N complains that a chargeback she raised with Nationwide Building Society (“NBS”) wasn’t successful. She says she followed NBS’ advice, but she’s not received the refund she’s entitled to.

Mrs N is represented in her complaint. For ease of reading, any reference to “Mrs N” refers to the testimony of both Mrs N and her representative.

What happened

Mrs N complains about a transaction she made using her NBS VISA debit card. She purchased a car for a family member, but she says that it quickly became evident that the car was dangerous and had more faults than should reasonably be expected when supplied by a licensed car dealer. Mrs N told us:

- She purchased the car for her son at a cost of £3,100, but after having been driven for only a short period of time, many problems and issues became apparent, so it was arranged that the car would be serviced by her son’s local garage, whereupon a number of serious faults and issues were identified;
- she contacted the dealership that had supplied the car to discuss returning it, but the dealership wouldn’t engage with her either by phone or via social media;
- on 14 October 2022, she contacted NBS to enquire about disputing the transaction and it told her that the best course of action was to raise a chargeback and return the car to the vendor;
- when she explained they couldn’t contact the dealership, NBS told her to leave the car on the dealership’s forecourt, with photographic evidence, and leave the keys there too – so she left the car securely on the forecourt, locked and alarmed and posted the keys through the locked office door with an explanatory note. And they captured this in a short video to evidence that they’d done this;
- she sent all the evidence – copies of messages; pictures of the faults; and the video of the car being returned – to NBS, because she’d been told in one of her telephone calls with it that all this evidence was necessary;
- on 21 October 2022 NBS placed a temporary credit of £3,100 into her account whilst it investigated things, but as she heard nothing further from NBS, she assumed the matter had been successfully resolved and closed;
- six months later – 26 April 2023 – NBS told her the chargeback had been defended because she’d not provided sufficient evidence, and it withdrew the money from her account;
- she’s spoken with a number of people at NBS who have sympathised with her situation and told her how unfair it is, but each explained the decision was made by VISA; and the matter is out of NBS’ hands;
- to add insult to injury, the car is now being sold again by the dealership, which means it is profiting twice from the sale while she is out of pocket to the tune of £3,100.

In summary, Mrs N says she followed the course of action advised by NBS and she’s now worse off as a consequence, despite providing ample evidence to support her position; NBS

did not provide her with sufficient information about the chargeback process, before taking more than six months to decide her complaint in favour of the merchant, which is no longer trading.

NBS rejected Mrs N's complaint and said it couldn't agree it had done anything wrong because the payment under dispute had been confirmed as valid by the merchant bank. It went on to explain that Mrs N needed to have returned the car to the dealership and obtained a "receipt of return", or evidence of an attempt to return the car. It acknowledged that Mrs N had taken the car back to the dealership, but it said she "needed to have handed it to someone or made an agreement to return it with the dealership before taking it there".

NBS said it had sought a refund for Mrs N using the VISA chargeback scheme and that it followed the process correctly. It confirmed it had refunded Mrs N the disputed amount immediately, on a temporary basis, so that she wasn't out of pocket while the matter was investigated. But it says the merchant defended the chargeback. NBS says it then re-debited the disputed amount - £3,100 – to Mrs N's bank account. And it notified her accordingly.

NBS told us "[Mrs N's] claim was declined by the merchant's bank on the grounds that [Mrs N] hasn't returned the merchandise to them and was still in possession of the merchandise whilst the dispute was ongoing. It's a core rule that the merchandise must be returned to the merchant before a chargeback should be submitted as you can't have a full refund and keep the merchandise. [Mrs N] knew the location of the merchant, so it was their responsibility to return it to them which didn't take place. [Mrs N] informed us that they attempted to return and that the merchant didn't provide return authority however the claim was declined as the return wasn't fulfilled by [Mrs N]. This is unfortunately a valid decline on the merchant's behalf as again, [Mrs N] knows where the merchant is located. We challenged the decline at each stage of the dispute and even sent it off to Visa for manual review however they also sided with the merchant on the grounds that the merchandise wasn't returned to them. [Mrs N] will need to make use of the merchant's complaint procedures from here on as this is now a cardholder merchant dispute"

Our investigator looked at this complaint and said she thought it should be upheld. She said that although NBS had advised Mrs N that she'd need to return the car to the merchant if she wanted to raise a chargeback, it had also said in view of the merchant's disengagement with the situation and its refusal to take her calls or answer her messages, that she should return the car to the dealership's forecourt, leaving the keys inside the vehicle, before taking a photograph as evidence that the car had been returned. And she explained that in a subsequent call with NBS, Mrs N had been told to leave the car's registration documents in it because the dealership would require these in order to re-register the car.

Our investigator concluded that, having listened to recordings of all four calls between Mrs N and NBS, on no occasion had Mrs N been told that the merchant would need to physically accept the return of the car and provide her with a refund receipt in order for the chargeback to have a chance of success.

NBS disagrees so the complaint comes to me to decide. It says it was forced to raise the claim with the information it was given even though it was made clear that the car needed to be returned. It says that to this day, it has no evidence that the car was ever returned to the merchant, and it's seen no evidence that the merchant sold the vehicle for a second time. But it did say that if our Service had evidence to show that the car had been returned and the dealership was selling the car for a second time, it would review things again.

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.

In deciding this complaint, I'm only considering the actions of NBS and how it handled Mrs N's request that it raise a chargeback on her behalf. I'm not looking at the actions of either the merchant from whom Mrs N bought the car, and I'm not investigating VISA.

Having considered everything very carefully, I have to tell NBS that I'm going to uphold this complaint, and that I require it to do something to put things right. I'll explain why.

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. It allows customers to ask for a transaction to be refunded in a number of situations, some common examples being where goods or services aren't provided, where goods or services are defective, or where goods or services aren't as described. In this particular case, an appropriate reason might be that the goods bought by Mrs N were faulty and defective.

There's no automatic right to a chargeback; the chargeback process doesn't give consumers legal rights; and chargeback is not a guaranteed method of getting a refund because chargebacks may be defended by merchants. This is because the rules, set out by the card scheme lay down strict conditions which must be satisfied for a chargeback claim to succeed. If a financial business thinks that a claim won't be successful, it doesn't have to raise a chargeback. But where there's a reasonable chance of success, I'd expect a financial business to raise a chargeback

It's important to note that chargebacks are decided based on the card scheme's rules – in this case VISA's – and not the relative merits of the cardholder/merchant dispute. So, it's not for NBS – or me – to make a finding about the merits of Mrs N's dispute with the merchant, or whether or not the chargeback rules are fair. NBS's role is to raise the appropriate chargeback and consider whether any filed defence by the merchant complies with the relevant chargeback rules.

In this particular case, I've been fortunate to have been supplied with a number of call recordings; telephone conversations between Mrs N and NBS from the time she first raised her claim, to when she subsequently telephoned for updates on its progress.

I've listened very carefully to each of the call recordings between NBS' representatives and Mrs N and I think the following is significant:

- Telephone call 2 – a Friday
 - Mrs N telephones to discuss her dispute and get some advice on raising a chargeback. She explains the timeline of events; the issues and faults with the car; and she confirms that the car hasn't been returned to the dealership – it'll need picking up – it's simply not safe to drive.
 - NBS confirms it has all the information it needs to set up the dispute. The representative then explains that a refund decision will be made within the next 48 hours, and Mrs N will hear from NBS' Visa Disputes Team by 5pm on the following Tuesday with a decision.
 - When Mrs N asks what is meant by "*a decision*", The representative explains that she'll hear whether NBS can go forward with the case or, what information is still needed from Mrs N before the case can be progressed.
- Telephone call 3

- Mrs N telephoned for an update. She's advised that it's been closed. Mrs N queries this because she's told the claim was closed on Friday – but this was the day she called NBS in the first instance to make the initial claim.
 - The representative says, *"it probably hasn't been closed – it's the system"*. But they go on to explain that it's been marked as *"resolved and declined"*.
 - The representative details the additional information Mrs N needs to send in to support her claim. They acknowledge that she's already given this information to NBS verbally in her previous telephone call, but they explain she'll need to send in documentary evidence as well.
 - The representative explains that NBS assemble *"a big file to send away to VISA with all the evidence..."*
 - Mrs N confirms that the merchandise – the car – hasn't yet been returned to the dealership, and she explains why this is the case. The representative reassures her, telling her that the car must go back to the dealership and that VISA will need proof that it has been returned. But, in view of the issues Mrs N has with the dealership, he suggests a solution would be to *"take the car back, take a photo on the forecourt, leave the keys inside it"*. The representative explains that the photograph will replace the need for a receipt and confirm that the car has been returned.
 - The representative provides Mrs N with an email address so that she can send in the documentary evidence and reassures her that *"if they need anymore evidence, they will ask you for it. That's when you can send in the evidence that you've sent the car back...as long as we don't send the case to VISA...because as soon as we send it to VISA and they make a decision, unfortunately that is a final decision"*. But he reassures Mrs N by saying *"but with Nationwide, as long as we continue to get all the evidence, we can continue to do the dispute...but we will try our best to get everything we need"*.
- Telephone call 4
 - Mrs N calls to ask about the car registration paperwork – what should she do with the D5 paperwork? Should she simply leave it with the car?
 - The representative says she has *"no idea"*, so she will enquire with the VISA disputes team using an internal chat function. But the representative's frustration is audible because after nearly 10 minutes, she's not received a response with any sensible advice, and the only response she has received, didn't answer the question.
 - The representative seeks advice again and receives another response, but again, the advice doesn't answer the question that's been asked.
 - The representative asks for advice a third time and is told *"I'd recommend she takes copies"*. The representative interprets this to mean that Mrs N needs to take copies of the car registration documents for herself but advises her to leave the originals in the car. She explains that the dealership will need the original so that they can re-register the car and take back ownership of the car.

Mrs N is not a subject expert on the chargeback process. So, it was incumbent on NBS to explain the chargeback process to her accurately, something it failed to do. Mrs N should have been able to rely upon the advice and information given to her by NBS, but I think it gave her incorrect information and advice: it advised her to leave the car on the dealership's forecourt; it said a photograph would be sufficient to evidence the return of the car; and it advised leaving the car registration documents in the car.

I'm also persuaded that NBS didn't do what it said it would do: it didn't tell her what information it needed before it progressed her claim; and it told her it would keep collecting the required evidence from her before it ultimately submitted her claim to VISA.

In summary, I'm satisfied that had NBS given Mrs N the correct information about the chargeback process at the outset; had it listened to and acted upon what she told its representatives in her telephone conversations; and had it asked for the additional information and evidence that it, only latterly, says would cause it to review its position, I believe there's a very high likelihood that Mrs N's chargeback claim would've succeeded.

Moreover, NBS told this Service on more than one occasion that if there were evidence to show that the car had been returned and the dealership was selling the car for a second time, it would review things again. But I can't see that NBS has done this.

And so, in conclusion, I don't think NBS treated Mrs N fairly.

Putting things right

I believe Nationwide Building Society should have done more when Mrs N made a claim, and I'm satisfied that Nationwide Building Society are at fault here and need to put things right for Mrs N.

I've decided that Nationwide Building Society must:

- pays Mrs N £3,100 in respect of the purchase price of the car;
- add 8% simple interest per annum from the date that the temporary credit was removed from Mrs N's account to the date of settlement;
- pay Mrs N £300 for the distress and inconvenience it caused her because of the poor information and incorrect advice it gave her.

My final decision

My final decision is that I uphold this complaint and require Nationwide Building Society to pay the redress that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 26 June 2024.

Andrew Macnamara
Ombudsman