

The complaint

Mr A complains National Westminster Bank Plc (NatWest) have acted unfairly by not refunding the payment he made towards a holiday using his credit card.

What happened

In May 2023 Mr A used his NatWest credit card to purchase a package holiday at a total cost of £14,460 paid across two instalments. He arranged this through a tour operator, I'll refer to as Company G, who he made payment to for the holiday.

The holiday was for Mr A and his wife, departing on 19 August 2023. Included in the price were return flights from the UK to Canada, accommodation, tour excursions and a number of meals. The price also included transport throughout the tour and two multi-day railway journeys. The first provided by a rail operator I'll call R and the second provided by a rail operator I'll call C.

Upon their arrival in Canada on 19 August, Mr A says they were informed that, as a result of wildfires in the region, their first multi-day railway journey with R, due to start on 21 August, had been cancelled. In place of the railway journey Company G arranged an additional night's stay in Vancouver, before flying them to Calgary the following day to continue their tour.

The wildfires unfortunately caused Mr and Mrs A further disruption when they were unable to board the railway journey with C at the original start point on 26 August. On this occasion Company G arranged for a coach to transport them to the next station along the route, where they joined the journey with C.

After their return Mr A contacted Company G to claim a partial refund of the cost of the trip. In summary, Mr A considered they should be refunded for:

- Their missed railway journey with R.
- Compensation for the loss of three days of experiences and travel rearrangements as a result of the wildfires.
- One hotel room stayed in wasn't of satisfactory quality.

After some discussion Company G offered £3,200 – which consisted of refunds provided by R and C, along with additional meal expenses, which Company G said was proportionate to the disruption caused to Mr and Mrs A.

Mr A didn't agree so contacted NatWest, in an attempt to claim a partial refund of £5,000 from the cost of the holiday. NatWest reviewed matters and obtained £3,200 previously offered by Company G through the chargeback process. However, they declined his claim for the remainder of the compensation, saying the amount refunded was reasonable and as the cancellation was as a result of circumstances beyond their control, Company G weren't liable for the disruption caused. NatWest refused to change their position after Mr A complained, and so he referred the matter to this service.

An Investigator here looked into things but concluded there'd been no breach of contract or misrepresentation by Company G. She said Company G didn't act unfairly by not offering Mr and Mrs A an opportunity to cancel their trip before departure. And the agreement between Company G and Mr and Mrs A meant as the cancellation had been as a result of circumstances beyond their control, Company G weren't required to provide a refund. She also explained that without being provided evidence to support Mr A's concerns about the hotel room, she was unable to say there had been a breach of contract here either. As such she didn't consider NatWest had acted unfairly.

Mr A didn't agree, and asked for his complaint to be considered by an Ombudsman, so it 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 a consumer approaches their credit card issuer with a problem with a purchase made using their card, there are two avenues via which the business can help.

The card issuer can try to reclaim the amount (or part of the amount) the consumer paid on their card, via the dispute resolution mechanism operated by the card scheme (Mastercard in this case), and which is often known as "chargeback". They can also consider honouring a claim under section 75 of the CCA. I will consider each of these mechanisms in turn below.

I think it would also be helpful to explain at this point, in this decision I'm only able to consider how NatWest handled the dispute Mr A raised with them. I'm not able to consider the actions of Company G, R or C, as that isn't within the jurisdiction of this service for these types of complaints.

Chargeback

Chargeback allows for a refund to be made of money paid with a credit card in certain scenarios, such as when goods have been paid for and not received. Chargebacks are governed by rules set by the card scheme to which the consumer's card belongs.

Following Company G's offer to Mr A of £3,200, he put forward a partial chargeback claim for £5,000. While a consumer cannot require their card issuer to attempt a chargeback, as it isn't a right, our service does consider it good practice to do so, if it is within the time limits and there is a reasonable prospect of success.

NatWest initially attempted a chargeback for £5,000, as Mr A claimed, but it was opposed by Company G – they said Mr A's claim was for around half the cost of the booking, despite the majority of services being provided without issue.

I've thought about whether NatWest should have taken matters forward or escalated the chargeback claim of £5,000 for Mastercard to decide. Chargebacks can only be raised for reasons specified by the card scheme. If a particular dispute doesn't fall neatly within one of those reasons, then it may not be a suitable dispute to raise via a chargeback. Having considered the reasons for which a chargeback can be raised under Mastercard's rules, I think it unlikely the chargeback for £5,000 would have been successful under any reason code. That's because Mr A went on the holiday he paid for, and while not everything was as expected, I've not seen he's evidenced the loss of £5,000.

In response NatWest escalated the chargeback to a stage known as “pre-arbitration” for £3,200.00 – the amount Company G had previously offered Mr A, which was successful.

Having seen no persuasive evidence that Mr A has shown a loss of £5,000, but having seen there were clear losses and that Company G offered £3,200, I think NatWest did enough by recouping £3,200 through the chargeback process. As such, I think NatWest treated Mr A fairly in relation to chargeback.

Section 75 of the CCA

Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any misrepresentation or breach of contract by the supplier of those goods or services, so long as certain conditions are met.

One condition which needs to be met for section 75 to apply to a purchase, is the claim must relate to an item with a cash price of over £100 and no more than £30,000. The cash price here met this condition. A further condition is that there needs to be what is known as a debtor-creditor-supplier (“DCS”) agreement in place. That’s also been met here, as Mr A’s credit card statement shows he made payment to Company G, and it’s this company he says have breached their contract with him. As such I’ve gone on to consider whether there has been a misrepresentation or breach of contract.

In essence Mr A’s frustrations with the holiday provided by Company G fall under the following areas:

- A state of emergency had been declared before they left the UK and as such Company G should have given them the opportunity to cancel their holiday before departure. Had they done so they would have received a full refund.
- The price reduction offered doesn’t align with the package travel regulations and nor is it comparable to other travellers who hadn’t upgraded their train journey, and it doesn’t cover the cost to rebook with R.
- The quality of some of the accommodation provided wasn’t of a reasonable standard.
- The customer service received from Company A and NatWest has been poor. He says, NatWest and Company A shared information between themselves, as well as with our service, that they’d not disclosed to him.

Misrepresentation

I’ve firstly considered whether there has been a misrepresentation in Mr A’s claim.

For the purposes of this case, a misrepresentation is a false statement of fact which induces another party into a contract which leads them to suffer a loss.

Mr A hasn’t pointed to any misrepresentations by Company G, that he says he’s relied on – his argument is in relation to a breach of contract. As I’ve also seen nothing that would represent a false statement by Company G, I’m not able to conclude there has been a misrepresentation in this case, for the purposes of section 75.

I’ve therefore gone on to consider whether there has been a breach of contract.

Breach of contract

A breach of contract occurs when one party to the contract fails to discharge its obligation to the other. These obligations may come about as a result of the express term of the contract, or because of terms implied by legislation.

Mr A has raised several arguments, so I've considered each of these in turn below.

Mr A says that a state of emergency had been declared before they left the UK, and as such, Company G should have given them the opportunity to cancel their holiday. However, there's nothing within the terms and conditions of the contract or The Package Travel and Linked Travel Arrangements Regulations (PTRs) 2018 that requires any state of emergency declaration nearby to mean they should have been given the right to cancel. The terms and conditions allow Company G this discretion, these say:

9. Changes and Cancellations by Us

... If we have to make a significant change or cancel, we will tell you as soon as possible and if there is time to do so before departure, we will offer you the choice of the following options:

a. (for significant changes) accepting the changed arrangements; or

b. If available and where we offer one, accepting an offer of an alternative holiday (we will refund any price difference if the alternative is of a lower value but if the alternative holiday is more expensive, you will be required to pay the applicable price difference); or

c. cancelling or accepting the cancellation in which case you will receive a full refund of all monies you have paid to us (including, where appropriate, the price paid for any holiday extensions or additional service purchased from us and included in your package).

Ultimately, I'm deciding whether NatWest considered this matter fairly and while this was an unfortunate situation – I can't hold them responsible for the wildfires that caused Mr and Mrs A's travel plans to be disrupted. This was a rapidly developing situation that could have changed suddenly. And while Mr A has pointed to reviews on a third-party website, which referenced an evacuation from R some days prior to their arrival – this isn't confirmation their trip, some days later, would be cancelled. And in any case, as set out above, the terms allowed for Company G to make changes to the arrangements at their discretion.

As such, I can't say there has been a breach of contract by Company G not giving them the option to cancel.

Mr and Mrs A were offered alternative arrangements which they went ahead with. And while I understand these arrangements weren't what they had originally planned, this doesn't mean Company G had breached the contract or subsequently NatWest have treated them unfairly. Both their terms and conditions and PTRs allow for this.

Company G's terms and conditions say:

22. Rail Journeys and Reservations

....Regardless of any information given by us in good faith, operational changes may be made by a rail supplier/operator at any point and without notice, and we cannot be responsible for these.

In addition, Regulation 15 of PTRs says:

(4) If any of the travel services are not performed in accordance with the package travel contract, the organiser must remedy the lack of conformity.....unless that –

(a) is impossible

Here it wasn't possible to provide Mr and Mrs A with the service they'd paid for. So it seems reasonable Company G put in place an alternative. The PTRs go on to say:

(8) Where the organiser is unable to provide a significant proportion of the travel services as agreed in the package travel contract, the organiser must offer, at no extra cost to the traveller, suitable alternative arrangements of, where possible, equivalent or higher quality than those specified in the contract, for the continuation of the package.....

In this case, Company G arranged for an alternative method of transport to ensure they could continue with the remainder of the trip as planned – so they've complied with this aspect of the PTRs and offered Mr and Mrs A as much of the package as was reasonably possible. It's also important to say here, while not the transport they had wanted, Mr and Mrs A were taken to the next destination at the cost of Company G.

The PTRs go on to say:

(9) Where the organiser offers proposed alternative arrangements which result in a package of lower quality than that specified in the package travel contract, the organiser must grant the traveller an appropriate price reduction.

As Company G have already offered a price reduction, what's left for me to consider is whether the price reduction Mr and Mrs A received would be considered appropriate and based on what I've seen I think it was. I've explained this in more detail below.

Company G have passed on the refund they received from R and C, as well as paid an additional amount for meal expenses. Mr and Mrs A upgraded their trip on R, and have questioned why the difference between their refund, and others, who didn't upgrade their ticket doesn't reflect this. They've also said the refund received doesn't cover the cost to rebook a trip with R.

I can't comment on the amount of refund received by other passengers, however I can say when a company like Company G purchases tickets from a supplier, such as R, they do so in bulk and generally benefit from a discount. The level of discount will vary depending on the amount and item purchased. I've also seen nothing to suggest Company G haven't passed on the full refund they received to Mr and Mrs A.

I understand Mr and Mrs A would like to rebook their trip with R, and the refund they've received isn't sufficient to do that. However, section 75 of the CCA is designed to cover actual loss, rather than the cost to rebook. And as explained above, as Mr and Mrs A purchased their trip with R as part of a package, they would have benefited from a discounted rate, and as they've already received a refund of that amount, and the benefit of the alternative transport provided, I wouldn't expect NatWest to make a further payment.

While I understand Mr and Mrs A's disappointment not to be in a position to re-book their trip, I can't say there has been a breach of contract as a result here either.

Quality of accommodation

Mr A has said the quality of accommodation in one hotel was poor and considers he and his wife became unwell as a result. As explained, I can only hold NatWest responsible for a misrepresentation or breach of contract by Company G, but I've not found persuasive evidence of either in this case. Concerns about things such as hotel rooms are subjective, and I've also not seen persuasive evidence that it was the room that made Mr and Mrs A unwell. Given this, I can't say NatWest has acted unfairly by not upholding this aspect of Mr A's dispute.

I've not identified anything within the contract to say that Company G's actions breached the contract or could be considered as a misrepresentation in this case.

I've also considered whether Mr A's concerns here suggest that Company G performed the service without reasonable care and skill, in which they are required – but I haven't seen that to be the case either.

Customer service

In terms of the service provided by NatWest, while I understand Mr A was unhappy with their rationale for declining his claim, I've not seen anything to say they should have done more in terms of the chargeback or section 75.

Mr A has raised concerns that NatWest and Company G shared information between themselves, as well as with our service, that they'd not disclosed to him. He said this could've impacted his ability to claim. So as part of my review, I asked our Investigator to ask Mr A what information he thought he'd not been provided, and how that impacted his ability to make a claim. Mr A referred to two responses from NatWest that said our service considered a refund of 20% of the holiday cost to be reasonable.

It's important to say here, this isn't a policy our service has and as our Investigator explained, we look at every complaint individually and on their own merit and as such, there is no percentage set for the amount of refund a complainant might receive in a case such as this, if I had decided NatWest had acted unfairly.

I do appreciate this will come as a disappointment to Mr and Mrs A, as it's clear the wildfires had a significant impact to their holiday. But as explained, Section 75 is prescriptive in the way a claim can be made, and unfortunately based on what I've seen, there's no evidence there has been a breach of contract or misrepresentation here – so even had Company G not made any monetary award, I'd be unable to say NatWest had acted unfairly. So as NatWest recouped £3,200 through chargeback, as they should have, I'm satisfied they don't need to do any more.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 September 2024.

Victoria Cheyne
Ombudsman