

The complaint

Mr W complains that Nationwide Building Society has treated him unfairly in relation (to its obligations with regard) to a payment he made on his Nationwide Credit Card.

What happened

In early September 2023 Mr W paid for accommodation for a holiday he was planning to take from 29 September to 6 October 2023. The total cost of the accommodation was £603, and Mr W paid for this using his Nationwide credit card. Mr W booked through an online third-party travel agent and paid the funds directly to them.

Mr W has reported a number of problems with the accommodation. To summarise he says early on in his stay he and the owner had a disagreement over where Mr W had parked his car. Mr W claims that there wasn't space for both his car and the owner's car to use the off-road parking (which was detailed as part of his booking). As a result of this Mr W claims the owner offered him a refund and he agreed to leave the property.

Mr W has also raised a number of other concerns about the accommodation relating to the condition and upkeep of the property. This included condensation, damp, smell of the property, limited cooking utensils, poor bedding and towels, worn out furniture, peeling paint and no outside light. Mr W doesn't think it deserves the rating which is advertised.

As a result of the issues experienced, Mr W says they left the property early on the third day of his holiday. He initially complained to the online travel agent, however this was unsuccessful, so he raised a dispute with Nationwide. Nationwide investigated the issues. It initially raised a chargeback to recover the funds, but this was defended and so ultimately unsuccessful. It also considered its liability under s.75 of the Consumer Credit Act 1974 (CCA), however it didn't think Mr W had the prerequisite debtor-creditor-supplier (DCS) arrangements in place to make a claim. Nationwide did agree there were some avoidable delays in the handling Mr W's claim and so it offered £100 compensation to recognise this.

Unhappy with Nationwide's response, Mr W referred his complaint to our service. One of our investigators consider the complaint. They didn't think that it should be upheld. They thought Nationwide had done everything it could with respect to the chargeback and agreed there wasn't a DCS arrangement in place for a s.75 CCA claim. They did think Nationwide could be held liable for a misrepresentation claim with regards to the services the online travel agent did provide. However, they didn't think that Mr W had evidenced there had been a misrepresentation. And finally, they thought the offer of £100 was fair to compensate Mr W for the delays. Mr W didn't agree with the investigator's opinion and so the complaint has been passed to me to consider.

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.

Having done so, I'm not going to uphold this complaint. I appreciate this will be disappointing to Mr W.

I've read everything that the parties have said, but I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

There were two ways Nationwide could have looked to recover the money paid. Either by raising a chargeback or by considering its liability under s.75 CCA. I'll consider each in turn.

Chargeback

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, or where goods or services aren't as described.

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 the merchant. 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. Where there's a reasonable chance of success, I'd expect a financial business to raise a chargeback.

In this case I can see Nationwide attempted to raise a chargeback. Prior to this it tried to gather further information from Mr W about how many days he had stayed at the accommodation, so it could raise a dispute for the unused portion of the booking. Mr W maintained he wanted a chargeback raised for the full amount which Nationwide therefore actioned. The chargeback was defended and ultimately unsuccessful. Mr W had used part of the service but had tried to claim for the full booking, so the owner of the accommodation (the supplier) defended the claim on this basis. The supplier also disputed that they had agreed a refund, as such there wasn't sufficient evidence of a refund being promised.

From everything I've seen, I think Nationwide did everything I would expect it to do regarding the chargeback. It raised the chargeback as requested but it was successfully defended. Based on the evidence provided, I don't think it was reasonable for Nationwide to progress the chargeback further.

S.75 CCA claim

When something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there's been a breach of contract or misrepresentation.

There are a number of criteria that need to be met in order for Mr W to have a valid s.75 CCA claim. One of which is he needs a valid debtor-creditor-supplier ("DCS") arrangement in place. Typically, this would mean the person who paid for the goods or services (the debtor) would pay the funds directly to the supplier (the accommodation owner) and it would be funded (or in part using) funds provided by the creditor (Nationwide). Therefore, the person who paid for the goods or service would have a contractual relationship with whoever supplied the goods or services and the creditor.

In this case Mr W paid the funds to the online travel agent rather than paying the owner

directly. Having reviewed their terms, the online travel agent says:

*1.3 **Two contracts:** When you make a Booking you are entering into two legally binding contracts at the same time, as follows:*

*1.3.1 Contract 1: We arrange a Booking with you as agent for an owner of a Property (each of which we call an "**Owner**"). That means that when you book a Property through us, you are entering into a contract directly with the Owner for the use of the Property and any related services. We call that use of the Property and any related services the "**Rental Services**" and we call that contract you have with the Owner the "**Rental Contract**". To be clear, we are not a party to the Rental Contract it is between you and the Owner (although we collect money from you on behalf of the Owner as the Owner's agent).*

So it's clear from this that Mr W had two contracts. His contract with the online travel agent was in relation to the booking and other services it provided. And he had a separate contract for the rental with the owner.

As explained above, Mr W paid the funds to the online travel agent. So the payment that Nationwide credited was only with respect to the contract between Mr W and the online travel agent, for the services related to the booking of the accommodation, but not the provision of the accommodation itself. It's clear that there was a separate agreement in place between the online travel agent and the owner. However, as Nationwide didn't fund the contract about the supply of the accommodation it can't be liable for it.

Turning to the contract between the online travel agent and Mr W, it's clear from the terms that it excluded liability for problems relating to the quality of the accommodation as it states:

"we accept no liability for any defects or unavailability of Rental Services, the Property or any other problems with your holiday. Your rights under these Booking Terms and the Rental Contract for issues with Rental Services, a Property or your holiday are only against the Owner (unless we have done something wrong in relation to the Booking Services or [online travel agent's] Other Services which caused that problem)."

It's liability was only for issues that arise in relation to the booking or other services it provided. Looking at the evidence I have available, I think it's clear the online travel agency fulfilled its responsibility to book the accommodation requested and Mr W hasn't persuaded me it breached this contract in any other way. The issues with the quality of the accommodation are excluded from this contract and as there is no DCS in respect of the contract between Mr W and the owner, Nationwide cannot be held liable for them under s.75 CCA.

Turning to misrepresentation, a misrepresentation is a false statement of fact made by one party to the contract which induces the other party to contract (when they otherwise wouldn't have done so)

Mr W has argued that the online advert for the accommodation was misrepresented to him. Specifically, that the advert detailed there was off-road parking for one car. However, the owner also used the space and Mr W argues there wasn't room for two cars. I think the online travel agent has sort to limit its liability with respect to a misrepresentation about the details of the accommodation (based on the term detailed above). However, in any event, I've reviewed the photographs Mr W has provided and they suggest two cars can fit on the driveway, so I don't think Mr W has evidenced a misrepresentation with regards to this.

In addition, Mr W has argued the accommodation wasn't the four-star level he says it was advertised as. However, any star awards or quality ratings are opinions and as such aren't false statements of facts. And Mr W's assessment that the accommodation doesn't meet a four-star level is also subjective. So don't think Mr W has demonstrated that the contract was misrepresented to him.

To summarise, Mr W hasn't persuaded me that there is a breach of contract or misrepresentation with respect to the contract he had with the online travel agent. So I don't think Nationwide acted unfairly in declining his claim.

Compensation

I understand Mr W has complained about delays in the handling of his claim. Nationwide has already offered him £100 to compensate him for this. In the circumstances, I think this is fair compensation given the timeline of the claim and so I'm not making any further award.

My final decision

For the reasons explained I don't uphold this complaint against Nationwide Building Society.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 May 2025.

Claire Lisle
Ombudsman