

The complaint

Mr M complained about the way Nationwide Building Society dealt with a claim for a refund for the deposit he paid for a package holiday.

What happened

Mr M booked a holiday in February 2023 over the telephone through a travel agent I'll call "T". The total cost of the holiday was around £2,000 and Mr M paid a deposit of around £1,000 at the time of booking using his Nationwide credit card. The remaining balance was due to be paid in July 2023.

After calling T in March 2023, Mr M wrote to it in early June 2023 asking for his deposit back. He didn't think it was safe for him and his wife to travel to the particular destination and wanted to cancel the holiday. He referenced information he found on a website. He said he didn't get a response from T, so he raised a dispute with Nationwide in July 2023.

Nationwide said it raised a chargeback claim around September 2023, which T defended. Nationwide informed Mr M about this in November 2023. After Mr M reiterated his dispute, Nationwide said it considered a claim under Section 75 of the Consumer Credit Act 1974 (Section 75) in December 2023. It gave its position to Mr M in February 2024 and informed Mr M the booking was non-refundable, and it didn't think there was a breach of contract so he wouldn't be getting a refund.

Our investigator reviewed the complaint but didn't uphold it. He found Nationwide took the correct steps in raising a chargeback claim and didn't act unfairly when it didn't pursue this further. He also considered its actions under the Section 75 claim and agreed Nationwide wasn't provided any evidence to show there was a misrepresentation or breach of contract by T. He didn't think Nationwide needed to take any further action.

Mr M disagreed with the investigator's findings and asked an ombudsman to review his complaint. He said that T didn't provide him with information about the refund of deposits and Nationwide should be held responsible as it didn't pursue T enough and he had a valid Section 75 claim.

I issued a provisional decision that said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I understand Mr M was worried about taking the trip and decided to cancel. I appreciate he feels T has made it difficult to get his deposit back, but I need to consider the actions of Nationwide as the financial provider in this complaint. I'm not considering a complaint about T.

To consider if Nationwide has treated Mr M fairly here – I need to think about whether it should have done more to assist him in getting his money back. That means considering whether Nationwide did enough in respect of the chargeback process and, if necessary, whether its response to the Section 75 claim was fair and reasonable.

Chargeback

In certain circumstances a card issuer can raise a chargeback dispute under the relevant card scheme rules. This is where the cardholder has a dispute with the merchant, but this is subject to strict rules and there is no guarantee that the card issuer will be able to recover the disputed amount. Whilst there is no obligation for the card issuer to raise a chargeback claim, I think it's good practice to do so, where there is prospect of success.

The most relevant chargeback condition in this case would be cancelled merchandise/services. Nationwide raised a chargeback, and this was fair of it.

The chargeback was defended on the basis the terms and conditions didn't allow Mr M to receive a refund in this situation. T also said it let Mr M know about the terms when he called it to book the holiday.

I've thought about whether Nationwide should have pursued it further to pre-arbitration. But I don't think Mr M had any further evidence to submit. The terms and conditions state he wasn't due a refund in this instance. So, I think it would've been defended again on the same basis and there wasn't a prospect of success. I don't think in these circumstances Nationwide acted unfairly.

Section 75

Under Section 75, Nationwide is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is T in this case. As T organised the holiday, I'm satisfied it is responsible for the performance of the contract and has to meet the requirements under the Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs). In order for there to be a valid claim under Section 75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place and the transaction needs to be within certain financial limits. I'm satisfied the criteria has been met.

I've not seen there was a misrepresentation. I can't see there is any evidence that T has given a false statement of fact which induced Mr M into the contract.

I've thought about whether there's a breach of express terms of the contract – but as I said above, Mr M wasn't entitled to a refund in these circumstances. The terms and conditions state there is a loss of deposit if the booking is cancelled more than 91 days prior to departure.

I've also thought about if anything else has gone wrong.

I'm mindful the PTRs indicate Mr M should've been told about cancellation information before he made the booking. He's indicating he wasn't. But T is indicating he was. There's evidential challenges here and I'll never know for sure what happened. I think Nationwide would have had those same challenges. Based on the evidence that was presented to it, I don't think it reached an unfair conclusion.

Based on the evidence, I'm not persuaded Nationwide was unfair in not finding there was a breach of contract, or that T did something wrong when selling the holiday.

However, I think Nationwide could have dealt with the Section 75 claim more promptly. I can see Mr M referred to a Section 75 claim when he first raised the dispute in July 2023, however Nationwide didn't give its answer on this until February 2024. Whilst it dealt with the chargeback first, which I think is fair, I think Nationwide could have told Mr M its position on the Section 75 claim sooner. I think there was added inconvenience to Mr M before it did, as he had to write more letters and provide information that Nationwide already had to consider a Section 75 claim. I think it should pay £100 to reflect the added inconvenience to Mr M and to reflect the delay.

I appreciate my decision will be disappointing to Mr M. I think Nationwide fairly processed a chargeback claim and it fairly assessed a claim under Section 75. However, I think Nationwide should have given Mr M an answer on the Section 75 claim sooner so I think Nationwide should pay Mr M £100 to reflect the delays in its claim handling.

Nationwide responded to say it agreed with the provisional decision and agreed to pay Mr M £100. Mr M responded to say he was disappointed with the way he was treated by Nationwide and he wanted a refund from Nationwide under a Section 75 claim. He reiterated he wasn't given information about refunds and the timescales and the terms and conditions when he called to book the holiday with T. Mr T again provided copies of the letter he sent to T in June 2023 and the information he referred to from a website.

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.

Thank you to both parties for their responses. I've noted Nationwide's acceptance and have read Mr M's letter in response to the provisional decision.

However, I haven't been provided with any new information or anything materially different to change my position. Because of this I think Nationwide fairly processed a chargeback claim and it fairly assessed a claim under Section 75 based on the information available. However, I think Nationwide should have given Mr M an answer on the Section 75 claim sooner so I think Nationwide should pay Mr M £100 to reflect the delays in its claim handling.

My final decision

My final decision is that I uphold this complaint and direct Nationwide Building Society to pay Mr M £100 compensation. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 January 2025.

Amina Rashid
Ombudsman