

The complaint

Mrs M complains Nationwide Building Society (Nationwide) did not do enough to help her recover the cost of a holiday at a resort, which she paid for using her debit card.

What happened

I issued my provisional decision on this complaint in November 2024. I've reproduced that provisional decision here, and it's incorporated as part of my overall findings.

I invited both parties to let me have any further comments they wanted to make in response, and I'll address any responses later in this decision.

The background facts are well known to both parties, so I will only cover these briefly.

In January 2024, Mrs M paid around £600 using her Nationwide debit for a multi-night stay at a holiday resort, starting on 26 February 2024. The booking included accommodation and access to the resort's Subtropical Swimming Pool.

Mrs M and her family had issues with a number of facilities but were particularly unhappy with the swimming pool. The resort's website describes the pool as 29.5 degrees Celsius, but Mrs M says it was 25 degrees and it was too cold for her nine-year-old son to swim. The pool's temperature was important to her because her son is disabled and the only activity he could participate in was swimming.

Mrs M complained to the resort. It admitted a number of problems, including issues with the pool's boiler – but said the pool's temperature was kept within its acceptable range. Mrs M did not think the resort would likely fix the problems, so she left two days early.

Mrs M asked Nationwide to chargeback the full amount she paid, as she did not think she received what was advertised. Nationwide attempted a chargeback but said it could not proceed as Mrs M could only claim for unused holiday under the rules. So Mrs M tried raising a partial chargeback for £470 for the two unused days. Nationwide amended this to £250.80 after some discussion, to reflect the value of the unused holiday more accurately.

Nationwide raised a chargeback and gave Mrs M a £250.80 temporary refund on 20 March 2024. It also offered Mrs M £25 compensation for any inconvenience and delay caused by not telling her earlier she could only raise a partial chargeback.

The resort defended the chargeback in April 2024. Nationwide took things further via VISA's pre-arbitration process, but the resort continued to defend the chargeback. Nationwide did not progress the claim to arbitration as it did not think it would likely succeed, and the refund was reversed. So Mrs M complained to the Financial Ombudsman Service.

Our investigator referred to some of the resort's terms and conditions, which effectively say no refund is due for unavailable facilities or cancelling a holiday after arrival. He did not think the chargeback would likely succeed at arbitration because of these terms.

Mrs M disagreed. She said Nationwide did not forward her evidence to the resort – and if Nationwide had, she'd have likely kept her refund. She also said Nationwide did not warn her the refund was temporary, and its reversal surprised her and put her basic account into an overdraft. She thinks this may have impacted her credit file.

As the complaint could not be resolved informally, it has come to me for a decision.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what I feel is fair and reasonable in the circumstances of this complaint. My conclusions are based on what I think is most likely to have happened given the information available.

While I've reviewed all the information submitted, I'm focusing on the points I believe are key. My role is resolve complaints informally, so I won't be commenting on every detail.

I've also considered events that occurred after Nationwide issued its latest final response. This includes the outcome of the pre-arbitration and the reversal of the temporary refund. I've done this as the parties agree I can consider these events here.

Chargeback process

When someone buys something with their debit card, and something goes wrong, there's no general obligation on their bank to provide a refund. But in certain circumstances, such as where services are not provided or not as described, the bank can raise a chargeback.

The chargeback process is run by the relevant card scheme provider – in this case that's VISA. Banks can attempt a chargeback on behalf of its customers, but as the process is voluntary it does not have to raise one. However, I would expect it to attempt one as a matter of good practice if there was a reasonable prospect of the chargeback succeeding.

I cannot tell a scheme provider how to run its chargeback process – but I can consider whether the bank correctly applied the scheme rules and conducted the process fairly.

Mrs M spoke about injuries she suffered from the condition of the lodge, and her son being upset by the pool being too cold for him. However, these points are not grounds for a claim under the chargeback scheme, so I won't be considering these particular points further.

What I am considering are Mrs M's main concerns over how Nationwide handled her partial chargeback for £250.80 under VISA's scheme rules. She thinks Nationwide should have sent her evidence to the resort, and if it did she would have kept her refund. She also says she should have been warned the chargeback payment might be reversed.

I've carefully considered these concerns below.

Partial chargeback

The £250.80 partial chargeback was for the remaining holiday Mrs M had not used. Nationwide raised this claim under VISA's dispute condition "Merchandise/Services Not Received", because it's the category Mrs M chose from its website.

The dispute condition covers merchants who are unwilling or unable to provide services. It does not cover claims where services are available, and it specifically excludes claims that are about the quality of an available service. Put simply, it does not cover Mrs M's situation. I say that because the full holiday was always available for Mrs M to use, and she never claimed otherwise. The essence of her claim is the pool was misdescribed. I think it was foreseeable a claim under this condition had little prospects of success.

Nationwide ought to have instead raised the claim under the dispute condition "Not as Described or Defective Merchandise/Services". This condition covers claims for services not matching their description, such as the pool's temperature not matching its advertised temperature on the holiday resort's website.

Alternatively, Nationwide ought to have given Mrs M enough information so she could make an informed decision about what dispute condition to choose. Nationwide appear to suggest it gave Mrs M enough information, and it didn't do anything wrong by simply processing the dispute condition Mrs M selected from their website. I don't agree.

Even if I were to accept it was Mrs M's responsibility to choose a suitable dispute condition, in line with Nationwide's chargeback process, I'm not persuaded Nationwide did enough to support Mrs M in making that choice. The claims process on Nationwide's website asks its customers to choose a dispute condition from a drop-down menu. One of the reasons is described as "Good or service not received". Another is described as "Faulty, incorrect, or returned good". But there is no listed reason that says it covers services being misdescribed or faulty, even though this is a valid reason under the VISA chargeback rules and is the very thing Mrs M complained about.

I asked Nationwide why this condition was missing, but it has not given an explanation. I also appreciate the website as it is now might have been different when Mrs M selected a suitable reason, but I think it reasonable for me to assume it wasn't materially different.

If Nationwide did more to support Mrs M as it should have, I think she would have likely chosen the dispute condition that mostly matches her circumstances – that would be "Not as Described or Defective Merchandise/Services".

Under this dispute condition, I think Mrs M would have likely submitted the same claim and evidence. I say that because her written claim largely spoke about the service she received being misdescribed. And as the holiday resort responded directly to Mrs M's claim for misdescribed services, I think it's likely the resort would have also provided the same response as it had under the current chargeback claim. There's nothing to suggest its response would have been materially different.

Following the above, I think it's fair I consider whether the chargeback claim would have likely succeeded had it been raised under "Not as Described or Defective Merchandise/Services" as I think it reasonably should have been.

Alternative claim for services not as described

Everyone agrees the pool was colder than usual. Mrs M provided a response from the resort admitting it was "lower than normal" but was within "set parameters". It also confirmed a defective boiler was to blame. Mrs M shared online chats from other visitors, one of whom confirmed the pool was 25.8 degrees Celsius. She noted the resort's website advertises the temperature as "29.5C all year round" and that it does not say it may vary. She also noted the website does not say the temperature must stay within a certain range. Mrs M provided the information required under the dispute conditions, making her claim valid.

Whether the claim then succeeds largely depends on the strength of the resort's defence. I don't think their main objections were compelling:

- (1) The resort initially argued it already issued a £23 refund. Although refunding part of the amount claimed for might be relevant under the rules, Mrs M showed the £23 paid was for separate archery classes, and unrelated to the original booking.*
- (2) The resort said Mrs M never complained, yet she included a copy of her original complaint email to the resort, sent during her holiday, proving she did.*
- (3) The resort contested the claim amount, saying it should have been for the full amount and not a partial amount. It misunderstood VISA's rules which require partial claims are made where some services were used.*

Further, the dispute condition also required the resort to show the service provided matched its description. However, it did not explain how the pool's temperature being kept within "set parameters" is compatible with the single temperature specifically promoted in bold on its website. The resort also did not provide or refer to terms that give it a right to keep the pool at a temperature lower than specified.

For completeness, I had a look at the terms. I've seen the general terms our investigator referred to – but they only apply to "unavailable" services, and so are not relevant to Mrs M's situation where the pool was available. The terms do not specifically explain the temperature is not guaranteed or that it's kept within a certain range – nor have I seen anything from the resort to suggest it had sought to rely on any terms in its defence.

In short, the resort did not show it provided a swimming pool advertised prominently and clearly as "29.5C all year round". So, it hasn't done what was required to defend the claim.

It's not entirely clear why Nationwide recommended claiming £250.80. However, I can see it was an amount settled on between Mrs M and Nationwide to reflect unused services, and it's an amount that I think is reasonable in the circumstances. I think it's likely the same amount would have been raised under this dispute condition.

In summary, Mrs M raised a valid claim, and I don't think the resort's defence was strong. For these reasons, I think Mrs M's claim would have likely succeeded.

Customer service issues

Nationwide admits it should have asked Mrs M more questions before her first chargeback attempt for the full amount. If it had, it would have known she had used part of her holiday, making the full amount claimed inappropriate under chargeback rules. The oversight caused a minor delay. In the circumstances, I think the £25 Nationwide offered and paid Mrs M for the impact of this error is fair. So, I won't be making further recommendations.

Mrs M believed Nationwide had not forwarded her complaint letter and other evidence to the resort, as the resort claimed it never received them. I understand why Mrs M thought this, but I don't think it means Nationwide failed to include her evidence. The resort could have been confused for other reasons or simply missed reading the information.

Nationwide double-checked what it provided, and sent a copy of what it included in the chargeback file. It includes Mrs M's original complaint letter and supporting evidence. I haven't seen anything compelling to persuade me Nationwide didn't forward this.

Mrs M also said Nationwide did not warn her the refund might be removed. In response, Nationwide provided an email from Mrs M, sent about two weeks before the removal, confirming she understood the refund would be reversed. Mrs M said the warning was too late. She said she did not have the means to avoid an overdraft with the notice given.

I've looked at the email and I haven't seen anything that shows Mrs M was unable to avoid an overdraft. If she was worried, I'd have expected her to discuss the situation with Nationwide. I think Mrs M had sufficient notice, and I don't think Nationwide did anything wrong here.

That said, I think the chargeback claim would have likely succeeded with the right support. And if it had, Mrs M would likely have kept her refund, and her account would not have gone into an overdraft. While Mrs M could have taken steps to avoid the overdraft, I think Nationwide is partly responsible.

In these circumstances, I think Nationwide should put Mrs M in the position she would be in had the refund reversal never happened.

My provisional decision

My decision is that I uphold this complaint and direct Nationwide Building Society to:

- *Rework the basic account as if it had not debited £250.80 on 31 May 2024 and if said re-working results in a credit balance it should repay this to Mrs M with 8% simple yearly interest calculated from the date of the credit balance to the date of settlement.*
- *Remove any adverse information from her credit file in respect of this account from 31 May 2024 onwards.*

If Nationwide Building Society deducts tax from the interest element of my award, it should provide Mrs M with a certificate of tax deduction.

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.

Mrs M accepted my provisional decision. Nationwide did not accept and raised further concerns, which I've briefly summarised and tried to give further context to as follows:

- If the chargeback was raised under the alternative dispute condition "Not as Described or Defective Merchandise/Services", relevant terms and conditions would have been provided in defence.
- These terms, which Mrs M agreed to, would show there are no refunds for cancelling a trip after arrival, or for any unavailable facilities.
- On the subject of what party would have provided these terms, Nationwide says "the merchant's bank would've simply provided the terms and conditions as decline documentation", such that "the member [Mrs M] would be in the same position".
- Further, Nationwide wasn't made aware the £23 refund was for archery lessons. Nationwide hasn't said why this is relevant, but it might be suggesting it couldn't reasonably contest the merchant's rationale that a refund was already provided. Nationwide provided a document showing a £23 refund was paid, with a note on it

from the merchant saying the chargeback is invalid.

I've carefully considered Nationwide's full response. Having done so, I'm not minded to change my position for broadly the same reasons I set out in my provisional decision.

Mrs M was always able to use her full holiday, but chose not to. So I don't think the chargeback dispute condition "Merchandise/Services Not Received" was appropriate as it doesn't cover situations where services were available and excludes quality disputes.

The more suitable dispute condition to raise the chargeback under was "Not as Described or Defective Merchandise/Services". This more closely matches Mrs M's main complaint about the available swimming pool being colder than advertised due to a defective boiler.

The dispute condition Nationwide raised the chargeback under was based on Mrs M's selection from the various dispute reasons available on Nationwide's website. I don't think she selected the correct option, but mainly because the website was not clear about what dispute reason Mrs M ought to select. If Nationwide did more to support her in making the right choice, as I think it should have done, I think it's likely the chargeback would have been raised under "Not as Described or Defective Merchandise/Services" and been successful.

Following my provisional decision, the key issue still in dispute is over what would have happened if the chargeback was raised under this alternative dispute condition. Nationwide says it still wouldn't have likely succeeded, but I'm not persuaded for the following reasons:

- The evidence Mrs M submitted was sufficient for raising a valid chargeback under the dispute condition "Not as Described or Defective Merchandise/Services", for the reasons already mentioned in my provisional decision. And in the absence of a reasonable defence, I think the claim would have likely succeeded.
- The terms and conditions that exclude liability for "unavailable" facilities don't apply here because (1) the swimming pool was available, and (2) the merchant had not submitted or sought to rely on these terms and conditions in its defence.
- I cannot say for sure what would have happened had the chargeback been raised under this alternative dispute condition. But I'm not convinced the merchant would have referred to the terms Nationwide mentioned in defence.

I say that because the merchant provided minimal evidence and made a number of incorrect statements in its defence. It incorrectly said Mrs M never complained. It incorrectly said the chargeback should have been for the full amount. And it incorrectly implied the £23 refund it gave Mrs M was for the holiday she bought, when it was instead for unrelated archery activities. The defence was weak.

On balance, the lack of due diligence displayed here indicates to me this isn't the type of merchant that, under a different dispute condition, would have likely referenced any relevant terms and conditions.

- I haven't seen anything that persuades me the merchant's bank would have stepped in to submit or reference any terms and conditions or make any argument on the merchant's behalf under a different dispute condition. The merchant's bank played a mostly passive role, and I don't think it would have likely behaved differently.
- Following the above, I think it's likely the chargeback would have succeeded under the dispute condition "Not as Described or Defective Merchandise/Services".

I've also considered the £23 refund Nationwide referred to. It says it was never advised the refund was for unrelated archery lessons. It's unclear if Nationwide is saying the merchant should have advised the refund related to archery lessons, or whether it expected Mrs M to.

If it's the latter, I haven't seen anything that shows Nationwide actively engaged with Mrs M to find out further information about the purpose of the refund - which I'd have expected it to if it thought it was potentially material to the chargeback's success.

I'm also mindful of Mrs M's 12 June 2024 email to our investigator confirming Nationwide never asked what the £23 refund was for. She also mentioned the £23 charge was on her Nationwide statement, and suggested Nationwide ought to know what the refund was for. I've seen the Nationwide statement, and I can see there's a £23 charge on 27 February 2024 for "[merchant] - ACTIVITIES LONGLEAT GB". This £23 charge was reversed on 28 February 2024 - the same day the merchant said it gave a £23 refund.

Either way, I think the point is moot because I don't think the refund provides much assistance to the merchant's defence - even without the receipt Mrs M provided showing the £23 refund was for a cancelled, unused archery booking.

The chargeback claim was initially for around £600 – reduced to £250.80 for the remaining unused holiday. The merchant provided a document showing that on 28 February 2024 it had processed a £23 refund, but gave little context as to what the refund related to except for asserting that "the refund has already been made for the amount of 23.00 GBP... So the chargeback is invalid for the dispute".

There's no accompanying documentation showing what the £23 refund was for, why it was for specifically £23, whether Mrs M had agreed to it, or how it was relevant to the chargeback defence so as to make the chargeback "invalid". Without further context, I don't think the relatively small refund compared with the amount being claimed for had much bearing on the strength of the merchant's defence, and so I don't think it makes a material difference to the outcome of a chargeback claim under the alternative dispute condition.

In summary, I maintain my original position that had the chargeback been raised under the dispute condition "Not as Described or Defective Merchandise/Services", as it would have if Nationwide provided more support as it should have, it would have likely been successful.

Putting things right

My decision is that I uphold this complaint and direct Nationwide Building Society to:

- Rework the basic account as if it had not debited £250.80 on 31 May 2024 and if said re-working results in a credit balance it should repay this to Mrs M with 8% simple yearly interest calculated from the date of the credit balance to the date of settlement.
- Remove any adverse information from her credit file in respect of this account from 31 May 2024 onwards.

If Nationwide Building Society deducts tax from the interest element of my award, it should provide Mrs M with a certificate of tax deduction.

My final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 February 2025.

Alex Watts
Ombudsman