

The complaint

Mr S is complaining about the way that National Westminster Bank Plc ('NatWest') handled a chargeback claim and a claim under Section 75 of the Consumer Credit Act 1974 ('section 75').

What happened

Mr S booked a flight with an airline company I will refer to as 'W', using an online payment system. The booking was for himself, his wife and father for a total cost of £2,395.32. All tickets were in economy class but on the day of the flight on 23 September 2023, he made a payment to W of £1,370.90 using his NatWest credit card to upgrade to business class.

When Mr S returned from his trip, he complained to W saying it was in breach of contract and that it had misled him about its services including about the seating, the meals that would be served and about the customer service he'd received which he said was 'poor'. Further, he said he was led to believe the upgrade would apply to the entire outbound journey but it transpired it only applied to the first of two flights in that trip.

Mr S made a section 75 claim and chargeback to NatWest. But NatWest rejected his claims due to lack of evidence. When the matter was reviewed by us, our investigator didn't think NatWest had acted unfairly, so she didn't recommend upholding the complaint. Amongst other things, in response to the investigator's view, Mr S provided evidence of the upgrade by way of an electronic receipt issued by W.

I issued a provisional decision explaining I wasn't minded to uphold the complaint and provided additional reasoning explaining why I had reached this outcome. I made particular reference to W's terms and conditions and didn't think Mr S had provided enough evidence to show there had either been a breach of contract or that he had been induced into entering a contract with W due to a misrepresentation.

Mr S disagreed. In summary, he didn't think my decision had properly considered relevant law including caselaw and regulations; he thought the bank was negligent in not raising a chargeback on his behalf; he considered the electronic receipt he provided to us was sufficient to show NatWest should have raised a chargeback or upheld a section 75 claim; he didn't think W had provided enough information at the time of the upgrade for him to make an informed decision about the upgrade; and whilst he acknowledged certain aspects of his complaint about the service he received from W were subjective in nature, he didn't consider my provisional decision properly considered the objective elements of his complaint.

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 reconsidered everything, I'm not upholding the complaint. Before I explain my reasoning for this decision, I want to make it clear that although I may not mention every point Mr S has raised, I've considered everything he has said. I note Mr S's detailed

submissions in response to my provisional decision. But, in essence, I think he has largely repeated what he had already told us and I did fully take everything he had said into account when reaching my provisional decision and now my final decision. And whilst I've taken Mr S's further submissions into account, my findings remain the same as those set out in my provisional decision, which are as follows:

When a consumer approaches their credit card issuer, NatWest in this case, with a problem with a purchase made using their card, the 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 known as 'chargeback'. The Mastercard chargeback rules cover things such as the types of disputes or problems which can be raised via the chargeback process; the kind of evidence which is required to support a chargeback; and the amount of time allowed for submitting claims.

Looking at Mr S's dispute with W which was about the poor customer service; dissatisfaction with the dining experience; and the failure to provide business class on the second leg of the outbound journey, I think it is at least arguable that this did fall into the Mastercard chargeback category given by Mr S, which was 'goods and services were either not as described or defective'. Nonetheless, given the lack of evidence provided to NatWest by Mr S to support his claim, I don't think a chargeback had a reasonable chance of succeeding here. Therefore, I don't think NatWest acted unfairly in not processing a chargeback via the Mastercard scheme.

In terms of Mr S's section 75 complaint, under this section of the Consumer Credit Act 1974, in certain situations, Mr S can hold NatWest responsible for a 'like claim' he might have against the supplier for breach of contract or misrepresentation in respect of the services it provides (as financed by the credit card). In this case, it was the upgrade to business class which is the service that was purchased using Mr S's credit card. I should note in terms of the Debtor-Creditor-Supplier agreement, as I said in my provisional decision, as this issue makes little difference to the overall outcome of the complaint, I don't think I need to consider this issue, particularly as NatWest hasn't disputed it.

NatWest declined the claim due to there not being sufficient evidence to support that there had been either a breach of contract or a misrepresentation. I should note at the point Mr S made his claim to NatWest, the evidence he provided to the bank was his testimony and the letters he'd written to W including to its (W's) Chief Executive Officer ('CEO'). Mr S also pointed to the payment made on his card on 23 September 2023 as evidence of him paying for an upgrade. Even in the absence of the evidence Mr S provided to us showing the details of the flight he upgraded to, from what I can see NatWest did consider Mr S's claim but didn't think there was sufficient evidence to uphold it. So, I've considered whether NatWest acted fairly in this regard.

W's terms and conditions were publicly available on its website so I think NatWest would reasonably have had access to these at the time of Mr S's section 75 claim. Whilst I'm mindful that Mr S may not have reviewed W's website at the time of his booking given he did this on the day of his flight, I still think, on balance, it's likely he would have been given the terms and conditions by W when he booked the upgrade. Further, I note in his letter to W's CEO, Mr S does specifically refer to W's website claims about the service he was expecting to receive from the business class 'experience' which he appears to have drawn from W's website and social media platforms. So, I do think he was likely to be aware of what was offered as part of an upgrade to business class.

Looking at the relevant section of the upgrade terms, amongst other things, these say: *"This exclusive offer is applicable to all passengers named and listed on the booking itinerary. The upgrade is only valid for the specific flight number(s) and date mentioned and may not be applicable to the entire itinerary. You can only purchase this one-time offer using one of the payment methods available online...All passengers in the booking must purchase the*

upgrade. It is not permitted to purchase upgrades for specific passengers selectively within the booking.”

The upgrade terms also say that if the customer had other flights with W indicated in the original booking which were not then included in the (upgrade) offer, the relevant flight would remain in the same class of service as the original booking. In other words, the upgrade offer would only be applicable to the specific flight mentioned in the upgrade booking. The only mention to the meals in the upgrade terms is about the availability of special meal requests. But I note W’s website discusses the meal options in business class as follows: *“Enjoy the convenience of our on-demand à la carte menu at any point during your flight when travelling in First or Business Class. With spacious dining areas at each seat, you can savour your meal while relaxing in the utmost comfort.”*

Looking at what W says would be provided as part of an upgrade to business class as I’ve outlined above, I don’t think Mr S has provided sufficient evidence to show he was either misled in anyway, and/or that there had been a breach of contract. In part, I say this because some of what Mr S said was subjective in nature such as the poor customer service he said he received from the cabin crew and about the seating being uncomfortable. I appreciate it is difficult to provide evidence to show these matters. But based on Mr S’s testimony alone, I think it is not possible to say whether the matters he describes as part of his complaint about W, amounted to a breach of contract or a misrepresentation.

Further, in terms of the dining experience, which Mr S says was ‘non-existent’, it’s unclear whether he is referring to the quality of what was served, or whether the meals as described, failed to materialise. Clearly if no meal(s) was served, I think this would be a breach of contract but I can’t see there is sufficient evidence to support that he wasn’t provided with meal(s) during the course of his flight. On the other hand, if Mr S is referring to the quality of the food, as with some other aspects of his complaint, this is subjective in nature. So, without more evidence to support Mr S’s testimony, it is difficult to make a judgement as to whether or not the quality of the food was as to be expected from travelling in business class with W.

For completeness, I should note that the Consumer Rights Act 2015 implies certain terms into contracts for the supply of goods or services. One of those implied terms is that where a service is being carried out, the service provider will exercise reasonable care and skill. But again, I think there isn’t sufficient evidence to show W failed to meet this requirement.

Mr S says in respect of the second flight which was part of his outbound journey, he was not provided with the promised upgrade to business class on this (second) flight. He says he was misled about this by W. The receipt Mr S provided to us, which wasn’t provided to NatWest at the time of raising his claim, shows the upgrade only related to one specific flight. So, even if I accept Mr S didn’t fly business class during the second part of his outbound journey, I don’t consider there’s enough to show W promised an upgrade to business class in respect of this second (outbound) flight.

I also note Mr S was dissatisfied with certain aspects of the return flight(s). But as I said in my provisional decision, as he did not provide any evidence of paying for the return flight using his NatWest card, I can’t hold it (NatWest) liable for any of these issues.

I appreciate Mr S is unhappy with the communications he received from NatWest. But I can see that Mr S did receive a response from NatWest about his claim. And it responded twice to his complaint about declining his chargeback and section 75 claim. I understand why Mr S may be frustrated by the generic tone of NatWest’s response(s) but I don’t think the use of standard wording, in itself, is unreasonable. NatWest reviewed Mr S’s claim; it asked him for evidence to support his claim against W; and when it reached its decision, it gave him specific

reasons for not upholding his chargeback and section 75 claim. So, I don't think the generic nature of its communications means NatWest didn't properly consider Mr S's claim against W.

In terms of the points Mr S raised in response to my provisional decision, as I've said, I don't think he has said anything substantially new. But for completeness, I will address some of his points here.

I know Mr S thinks NatWest had a duty to raise a chargeback, but I would only expect the bank to do so if there was a reasonable prospect of success. And due to the limited amount of evidence available to NatWest, I don't think it acted unfairly in not processing a chargeback. I note what Mr S says about the receipt showing the upgrade should be enough to prompt a chargeback, but this wasn't provided to NatWest when he made his claim to it. So, I can't fairly or reasonably say NatWest acted incorrectly by not taking it into account. And even if Mr S had provided it at the time of his claim to NatWest, for the reasons I've set out above, I'm not persuaded the bank would have reached a different outcome.

Whilst I sympathise with what Mr S said about the challenges of providing evidence, I've considered everything he has been able to provide including his testimony about what happened. I note Mr W now claims he wasn't given sufficient information by W about the upgrade to make an informed choice about this purchase. But as I noted above, I think it's more likely than not that he was given W's terms and conditions at the point of upgrading. It also appears he was aware of what was included as part of flying business class with W, which appears supported by his testimony and the contents of his letter to W's CEO.

Finally, I want to make it clear that I've fully taken into account all relevant caselaw. I've also fulfilled my role by taking into account all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having reviewed everything again, for all the reasons set out above, I am not upholding this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 February 2025.

Yolande Mcleod
Ombudsman