

## **The complaint**

Mrs B complains that Nationwide Building Society didn't do enough to help her when she told it about a dispute she had with a merchant, over services paid for using her Nationwide credit card.

## **What happened**

Mrs B purchased a seven-night stay at a hotel in turkey through a third-party travel agent (I'll call X). The booking comprised of three rooms for herself and her family. The total cost for the accommodation was £5,624.95 and the balance of £5,579.95 was paid in July 2022. The holiday took place from late August to early September 2022.

When Mrs B and her family arrived at the hotel, they were given rooms which didn't conform to the booking made. All three rooms were booked with sea views, however only one of the rooms had a sea view. Mrs B also says the rooms weren't located together which was concerning as she was travelling with young children and people with disabilities. It was therefore important to Mrs B that the three rooms were together.

Mrs B says she raised this with the hotel and whilst some steps were taken, they were unable to rectify the situation to her satisfaction. Mrs B maintains two of the rooms still did not have a sea view. Mrs B complained to X and subsequently raised a dispute to recover the funds with Nationwide. Nationwide has provided a copy of Mrs B's dispute form which is dated 27 September 2022. The payment which was disputed was the final balance of the hotel accommodation of £5,579.95.

Nationwide has said it raised a chargeback for goods/services not as described with the scheme provider (Visa) in May 2023, however it was unsuccessful. Nationwide has said that due to the passage of time, it has been unable to provide any further information. Nationwide then looked to recover the payment through a s.75 Consumer Credit Act 1974 "like claim". However, in October 2023 it concluded that Mrs B didn't have the required debtor-creditor-supplier (DCS) relationship needed to make a claim. This was because Mrs B had booked and paid for the hotel through a travel agent (X) and not paid the hotel directly. At this time Nationwide also explained that it would be re-debiting her account for the payment in dispute in 14 days. (This amount had been temporarily credited while the dispute was being considered by Nationwide.)

Unhappy with Nationwide's response and it's handling of the dispute, Mrs B raised a complaint. She also argued that the amount was re-debited earlier than 14 days leaving her in a difficult financial position. Nationwide took no action in relation to her complaint until January 2024. It's since apologised for this delay and offered £250 to recognise the distress and inconvenience caused. However, in relation to Mrs B's complaint, Nationwide didn't uphold it.

Mrs B referred her complaint to our service, and it was considered by one of our investigators. He thought that even if Nationwide had made errors in the handling of the chargeback, it was unlikely that this would have made a difference to the chargeback outcome. He also agreed that Mrs B didn't have the required DCS relationship to be able to

make a s.75 CCA claim. Unhappy with the investigator's opinion, Mrs B referred her complaint for a final decision.

I issued a provisional decision on this complaint which said the following:

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

*There are two ways Nationwide could have sought to recover the payment in dispute. This was either by raising a chargeback or a s.75 CCA claim. I'll consider each in turn.*

#### *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.*

*In order for s.75 CCA to apply there are a number of criteria which need to be satisfied. One of which is a valid debtor-creditor-supplier (DCS) agreement between the parties. However in these circumstances Mrs B made her booking using a third-party travel agent (X) for hotel accommodation only and made the payment to X. Her contract with X was for it to book the hotel rooms requested. From everything I've seen X booked the rooms requested, it was only when Mrs B got to the hotel that the hotel didn't have the specific rooms available. Therefore, I can't see that X has breached the contract. Mrs B's concerns are directly with the hotel but because she paid through X there is no DCS arrangement in place between her (the debtor) Nationwide (the creditor) and the hotel as X is the supplier in this arrangement. So Mrs B cannot make a s.75 CCA claim and I don't think Nationwide acted unfairly when declining it.*

#### *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, where goods or services are defective, or where goods or services aren't as described. In this particular case the appropriate reason, which Nationwide selected, was goods or services not 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. If a financial business thinks that a claim won't be successful, it doesn't have to raise a chargeback. But where there's a reasonable chance of success, I'd expect a financial business to raise a chargeback.*

*In this case Nationwide has said it raised a chargeback in May 2023 which was unsuccessful. However, disappointingly it can't provide any information about why the chargeback was unsuccessful. Nationwide also hasn't provided any context about the steps it took to gather information about the disputed payment or explained why it wasn't raised until May 2023. So I have very limited information about what has taken place. It is therefore difficult to conclude whether the failure of the chargeback was due to something Nationwide did or failed to do. I am therefore going to consider if, based on all the information I have about the dispute, the chargeback had any real prospect of success. If I think it did, then it becomes most likely that the failure of the chargeback was down to Nationwide's actions.*

*For a chargeback for goods/ services not as described, only the "unused portion" of the payment could be claimed. I have reviewed the chargeback rules and guidance issued by the card scheme provider to better understand how the unused portion is likely to be interpreted*

*in relation to hotel stays. Examples involving hotel stays tend to suggest, a refund can only be claimed where someone hasn't stayed at the hotel (because, for example it wasn't as described.) So it's likely a refund would only be paid for the number of nights which weren't occupied.*

*As explained above, Mrs B is unhappy because the hotel rooms weren't co-located and there wasn't a sea view in two of the rooms. However, I understand Mrs B and her family stayed in the hotel for the full duration of their holiday. So there wouldn't be any "unused portion" of the hotel stay which could be claimed based on the rules and guidance I've reviewed. I therefore don't think this chargeback had any real prospect for success. So I can't conclude the failure of the chargeback was due to Nationwide's action (or inaction). I think that regardless of Nationwide's involvement, the chargeback was unlikely to succeed.*

*I understand Mrs B raised her dispute in late September 2022, however it wasn't until May 2023 that Mrs B's chargeback was declined. She also wasn't told until October 2023 (almost a year after raising the dispute) that her s.75 CCA claim was also unsuccessful. As explained above, Nationwide hasn't given any details of the investigation which took place prior to raising the chargeback. It also hasn't explained why it took over four months to provide an outcome to Mrs B in relation to her s.75 CCA claim (after her chargeback was unsuccessful). So in the absence of anything which suggests the delays weren't Nationwide's responsibility, I think this represents poor customer service which was likely to have caused Mrs B some distress. So I currently think Nationwide should pay Mrs B an additional £150 to recognise this. If Nationwide can provide evidence which indicates these delays weren't down to it and it was actively taking steps to pursue the claims in a timely manner, it should provide this evidence in response to this provisional decision. I will then consider this before reaching a final decision. (As noted above, there were further delays when Mrs B raised her complaint, which Nationwide has separately provided compensation for. The compensation I am considering is separate to this and relates to the earlier handling of her claims.)*

*Finally, I have noted Mrs B's argument that Nationwide re-debited the payment earlier than it said it would, leaving her in a difficult financial position. However, I understand it told Mrs B the payment would be re-debited in 14 days which is when it was re-debited. So I don't think Nationwide has done anything wrong in this regard. If Mrs B is struggling financially I would encourage her to contact Nationwide to discuss this further.*

I asked both parties to provide me with anything further they would like me to consider, before I reached a final decision. In response Nationwide accepted my provisional decision. Mrs B didn't accept my decision. She asked for additional compensation given the interest the transaction incurred on her credit card. She also felt that Nationwide was at fault and should refund some of the payment made as it failed to make the correct application.

### **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 still not persuaded to uphold Mrs B's complaint, but I am awarding £150 for how Nationwide handled the claim.

As set out in my provisional decision, which forms part of this decision, I don't think Mrs B met the requirements to raise a s.75 CCA "like claim". As explained, this is because I don't think she had a valid debtor-creditor-supplier relationship in place with the hotel. Mrs B paid a third-party travel agent to book her the specified rooms and from everything I've seen, the travel agent took these steps. So the travel agent has fulfilled the terms of its contract with Mrs B. Mrs B's concerns with the rooms the hotel ultimately provided her with, fall outside the debtor - creditor - supplier relationship in place, as she made the payment directly to the travel agent.

Turning to the chargeback claim, Nationwide has accepted it made failings in its handling of the claim and has agreed to pay Mrs B an additional £150. As explained in my provisional decision I think this is fair compensation. I appreciate that due to these failings Mrs B wants her claim, or a proportion of it, paid to her. However, I don't think this is fair or reasonable in the circumstances. As explained in my provisional decision Mrs B and her family stayed in the hotel for the full duration of their stay. Under the chargeback reason goods/ services not described, it's likely that only the proportion of the booking in which the consumer didn't stay in the hotel would be refunded. So even if the chargeback failed due to something Nationwide did or failed to do, I can't see it would have been successful if Nationwide had done everything it should have. So, as explained I don't think it's fair to award Mrs B some or all of her disputed payment.

In response to my provisional decision, Mrs B has argued that the interest charged on the payment is very high. If Mrs B is unhappy about this and thinks this is inaccurate, she will need to raise this separately and with Nationwide in the first instance.

### **My final decision**

For the reasons explained above and in my provisional decision, I uphold this complaint in part, and I require Nationwide Building Society to pay Mrs B a further £150 compensation. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 16 April 2025.

Claire Lisle  
**Ombudsman**