

The complaint

Mr C is unhappy with how Nationwide Building Society (Nationwide) handled a claim he made to them.

What happened

Mr C purchased flight tickets in April 2024 using his Nationwide credit card to the sum of £158.88. This was for return flights from London to Vienna, with an airline I shall call 'H', departing on 5 May 2024 and arriving back on 7 May 2024.

Unfortunately Mr C's return flight from Vienna was delayed, and instead of a departure time of 18:10, the flight departed at 19:42. He therefore arrived late to London at 20:30 and only passed through passport control at 23:28, which was a few hours later than he anticipated.

As Mr C was unhappy with what'd happened, he contacted Nationwide to raise a chargeback claim against H and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against Nationwide.

Nationwide declined to raise a chargeback claim as they felt there was no prospect of success as H did provide a flight back for Mr C, even if it was late. They did however consider a S75 claim for a breach of contract but felt H hadn't broken their terms and conditions regarding the delayed flights here.

As Mr C didn't agree, he raised a complaint against Nationwide about the outcome of this claim. Nationwide sent a final response on 10 May 2024 clarifying that Mr C travelled on the delayed flight and therefore there wouldn't be any further redress due.

Mr C was unhappy Nationwide was unable to provide a refund and brought the complaint to us. He also said he was unhappy that Nationwide called him regarding the outcome to his complaint when he had asked for this in writing.

Our investigator looked at the complaint but didn't uphold it. They agreed a chargeback claim wouldn't be successful here as Mr C had attained carriage with H for his flight back to London.

They also said that regarding the S75 claim, H's terms and conditions mentioned providing information on further rights for compensation and assistance if the departure delay was two hours or more. Our investigator noted the delay was less than two hours and so felt H hadn't breached their terms and conditions by not doing anything more.

As Mr C has mentioned EC Passenger Rights Regulations as well, our investigator also didn't believe these had been breached as the delay wasn't long enough when arriving back in London.

Our investigator also addressed Mr C's concerns about Nationwide's decision to respond by telephone rather than writing. They said that the Financial Conduct Authority (FCA) DISP rules confirmed a final response needed to be sent within eight weeks to the consumer, but it didn't say all communication need only be in writing. Therefore they considered Nationwide had the right to resolve the complaint on the phone prior to the written final response being issued.

Mr C didn't agree with the investigator and asked for an ombudsman to make a final decision.

I previously issued a provisional decision. I said:

I've read and considered the evidence submitted by the parties but won't comment on it all –only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that Nationwide aren't the provider of the services here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr C paid for this transaction using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for Nationwide to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case VISA). I've considered the relevant chargeback rules in deciding whether Nationwide acted fairly.

I note that Mr C's chargeback claim could possibly fall under "Not as described or defective services" as the return flight took off later than scheduled. However a chargeback claim isn't the most appropriate avenue of redress here as Mr C did accept carriage back to London and used these services, albeit later than anticipated.

The nature of this service where delays can reasonably be expected at times and with the fact there is a mechanism for compensation for longer delays means it's unlikely this can reasonably be considered a service 'not as described' for schedule changes as far as chargeback rules are concerned.

I'm therefore satisfied Nationwide did nothing wrong in terms of their decision not to raise a chargeback claim on behalf of Mr C as I don't consider the claim likely to succeed.

Section 75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

In order to assess a valid claim, Nationwide would've needed to consider all relevant evidence with regard to the alleged breach of contract.

Nationwide said there was insufficient evidence of a breach of contract here by H as Mr C did travel on the flight and therefore there wasn't a prospect of a successful claim under S75.

Breach of contract

I've reviewed H's terms and conditions online and note Article 9 specifically refers to delays:

9.1.2 *If we change flight timings or numbers before scheduled departure, we will notify you about these changes by e-mail. We may also notify you by push notification and text message (if you gave us a phone number for this purpose) where these changes occur shortly before scheduled departure. You will be informed of your rights in accordance with clause 9.2 below.*

And the relevant clause says:

9.2.2 *If your flight is cancelled or delayed by two hours or more, we will give you information on your rights, including your rights to compensation and assistance.*

This means that I'd expect H to provide information on next steps following a departure delay if this is longer than two hours. Mr C has provided details of his flight booking and I see that he was scheduled to take off at 18:10 from Vienna.

He has also provided correspondence from H confirming the new departure time was 19:20 instead, so a delay of 70 minutes. I note our investigator reviewed the historical flight details online at the time and saw that it departed at 19:42 which meant a delay of 92 minutes. I've insufficient evidence that the delay was longer than the two hours stated in H's terms and conditions.

Our investigator also noted that the flight landed in London at 20:30. Mr C's flight booking confirmed the original flight arrival time was 19:25 which meant he landed just over an hour late to London. Mr C said he passed through passport control at 23:28 which was significantly after what he anticipated and therefore feels H should be liable for this.

Mr C also complained that this was four hours after the original scheduled arrival time at 19:25. With Mr C's flight delayed by an hour, this would mean it took an additional three hours for him to disembark and get through passport control at the airport.

He also cited the EC Passenger Rights Regulations (EC Regs) particularly section 261/2004. I see these regulations are also summarised on H's website for consideration of any further compensation a consumer may be entitled to.

These are a set of consumer protection regulations which give consumers certain rights when specified things go wrong with flights they have booked with an airline. These include rights when a flight is delayed, in which case they say a consumer would have "the right to compensation" so long as certain conditions are met.

However, the provisions in the regulations are not implied into contracts, By this I mean the legislation did not insert terms into Mr C's contract with H requiring them to pay him compensation and/or provide assistance in the event of delays.

With reference to H's terms and conditions, I see the link to passenger rights under section 9.2.2 does refer to EC Regulations and specifically notes this as a "Notice of your rights in the event of denied boarding, flight delays or flight cancellation (V15)". It then clarifies that 'this notice contains information about your rights established by European Regulation (EC) no. 261/2004 ('the Regulation') and applies to you if:' (it then lists the various circumstances).

However this serves as an advisory or informational purpose. In other words the references to the EC Regs would simply let Mr C know what his rights were under those regulations.

They did not make a contractual promise to pay compensation in the event of flight delays. I say this because of the way this is worded. It refers to a consumer having rights 'established' by EC Regs – in other words these rights were something Mr C was entitled to because of the EC regs, not as a result of the terms of his contract with H.

I'm therefore led to the conclusion that H has no express contractual obligation to pay compensation to Mr C for the delay to his return flight.

I also note that based on the evidence available Mr C's flight arrived with an hour delay. A significant aspect of the further delay experienced seems to be after the plane had landed and Mr C has said this was due to the time taken to disembark from the flight as well as the queues through passport control. He also mentions his tickets include Air Passenger Duty and airport handling charges and so considered the time taken at the airport should be a part of the S75 claim against Nationwide.

On the matter of disembarkation, I've insufficient evidence that there were any significant delays here to the point compensation would be due. Also regarding the duty and charges on the flight ticket, I can't see a reference in H's terms and conditions accepting responsibility here and this is the relevant agreement for my consideration of H's liability to Mr C. It must be noted that even if part of the payment to H included certain levies or taxes which the airline is obliged to collect, the relevant agreement regarding this claim is the one funded by Nationwide – which is the contract between Mr C and H.

Mr C also mentioned the lack of availability of seating and lavatory facilities while queuing at the airport but for the same reasons as above I can't say the airline would be responsible for this based on H's terms and conditions.

In conclusion, and with consideration of the fact the EC regs are not implied into Mr C's contract with H, I've insufficient evidence H breached their contract with him regarding his delayed flight. I therefore consider Nationwide did nothing wrong in declining his S75 claim.

Nationwide's handling of the claim complaint

Mr C has also expressed dissatisfaction with the fact Nationwide chose to call him to discuss his complaint rather than send their findings in writing. Mr C said that FCA rules state that all correspondence should be in writing.

DISP rules 1.6.2 does confirm that a 'final response' from the respondent would need to be a written response but it does not state that all communication relating to the complaint need be in writing.

I also understand Mr C did ask Nationwide in previous complaints to communicate in writing and provided an email from 2016 referencing the last complaint. Nationwide said they didn't have a specific communication request noted on Mr C's records for all communications to be in writing going forward but they did agree that Mr C had asked for a response in writing for those complaints.

Regarding this they also said that the complaint handler wished to discuss the matter with Mr C prior to sending this in writing. This doesn't seem unreasonable in terms of customer service to ensure any further concerns by Mr C are heard and I see a final response was then sent by email to him on 16 May 2024 as required.

I can't say Nationwide has acted unreasonably here. They did subsequently meet their obligations to send their findings in writing and I don't think their decision to call to discuss the complaint prior meant there wasn't an intention to follow this up in a written format.

I appreciate there had been previous requests on complaints asking for written communication in those instances but if Mr C wishes to have all future communication in writing only, he can contact Nationwide to update his correspondence preferences accordingly.

Nationwide responded to my provisional findings to say they had nothing further to add.

Mr C did respond and said he didn't feel this decision had been consistent with others issued from the service. He also said that the 'complexities' of what was stated in my provisional decision meant the service was mis-sold to him by H as these aspects were not made clear.

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.

Firstly on Mr C's comments regarding other outcomes from this service, these would depend on their individual merits and so I'm not able to comment on these. However my position remains unchanged regarding the merits of Mr C's complaint and the fact that the EC regulations weren't implied into the contract held by Mr C with H

Mr C now states he believes H's service was misrepresented and therefore Nationwide are liable under his S75 claim. I consider however that H's terms and conditions are clear and do clarify that rights to compensation and assistance would only be provided for flights delayed for two hours or more. Likewise I've insufficient evidence that the EC regulations were implied into the same contract.

My findings therefore remain unchanged regarding Mr C's complaint about Nationwide's handling of his chargeback and S75 claim and I can't say they need do anything more.

My final decision

For the reasons above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 May 2025.

Viral Patel
Ombudsman