DRN-5797103

The complaint

Mr V complains about the way Nationwide Building Society handled a claim he made to it in respect of a purchase he made using his credit card.

What happened

Mr V made two separate payments for flights using his Nationwide credit card. He purchased the flights through an online travel agent, who I'll refer to as "S", however the flight itself was operated by an airline, who I'll refer to as "A".

Mr V and the other passengers were all delayed by hours on departure. When he arrived at the destination, all five bags for the passengers were missing. He says he was told by A that their bags would d arrive in two hours' time, however, they didn't receive the bags until three days later. This caused problems for Mr V and his family because one of the suitcases contained food for his daughter, and she subsequently became ill as a result. Mr V says he hasn't received the service he paid for, and the service wasn't as described by A.

Mr V initially raised the matter with A, who said it would pay him $100 in compensation. Mr V felt that A's policies entitled him to much more compensation than this, so unhappy with how A intended to resolve things, he submitted a claim to Nationwide. In his claim, he said he wanted a refund of the cost of the flights.

Nationwide sent Mr V a letter letting him know that it had reviewed his claim under the Visa chargeback scheme, but it had no basis to raise a chargeback claim. It said that's because the service was provided to Mr V. And in addition to this, it wouldn't be able to claim for the compensation.

Mr V complained to Nationwide about its decision to not raise a chargeback claim. It responded to reiterate its decision in relation to the chargeback. It also explained that Mr V had no claim that could be made under Section 75 of the Consumer Credit Act 1974 ("CCA"), because he received the flights he paid for, and therefore he's not at a financial loss.

An Investigator considered what both parties had said, but they didn't think the complaint should be upheld. The Investigator explained that they felt Nationwide's decision not to proceed with the chargeback was fair - that's because there isn't a reason code under the chargeback rules that would be appropriate for the circumstances of Mr V's claim. The Investigator also didn't think that a Section 75 claim would be successful – they explained that they didn't think S had been in breach of contract. Ultimately, the Investigator didn't think that Nationwide had handled the claim unfairly or unreasonably.

Mr V didn't agree. He said he had only been able to use a partial service from A. And that given the issues he had with A; this clearly isn't the service that he paid for. He added that in relation to a Section 75 claim, he didn't receive the service he paid for, the goods provided were faulty, and the service wasn't as described by the supplier. Mr V also said that S should be responsible for the actions of A, in ensuring that the service he received was to standard.

Because an agreement couldn't be reached, the complaint was passed to me to decide on the matter.

I previously issued my provisional decision on this case. I did this because I explained the reason for my outcome in more detail. Because of this, I wanted to give both parties the chance to respond with anything else they wanted me to consider before I came to my final decision on the matter.

I have copied my provisional findings below, which also form part of this final decision.

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

Having considered all of the evidence available to me I don't intend to uphold Mr V's complaint. I appreciate this decision will come as a disappointment to him, however I will explain my reasons for this below.

I'm sorry to have read of the issues Mr V has had with both A and S. However, as Nationwide aren't the supplier of the service, I can only consider whether it acted fairly and reasonably in light of its role as the finance provider.

In deciding if Nationwide has acted fairly and reasonably, I have thought about the ways it could have helped Mr V get a refund, or the compensation he has requested, in line with what he said about A's policy. In this case, I consider the chargeback process and Section 75 of the Consumer Credit Act 1974 ("Section 75") to be relevant.

<u>Chargeback</u>

The chargeback process provides a way for the card issuer – in this case Nationwide – to help a customer claim a full or partial refund of the amount the paid on their card, if certain things go wrong with what they've purchased.

The process is overseen by the card scheme – in this case, Visa. Card schemes set out various rules covering things such as what sort of scenarios are eligible for chargeback, the kind of evidence required, and the timescales for a chargeback to be raised.

Generally speaking, it is good practice for a card issuer to attempt a chargeback where the right exists and there's some prospect of success. That said, they're not guaranteed to be successful, and a consumer is not able to demand that their card issuer attempt one. A chargeback can be defended too; the party which received the payment – in this case S – can resist a chargeback attempt. If neither party concedes then, ultimately, the card scheme itself can be asked to rule on the dispute in a process called arbitration.

The main crux of Mr V's complaint here is that Nationwide didn't attempt or raise a chargeback on his behalf. And as I've explained, Nationwide don't need to raise a chargeback in every case, and it is ultimately up to it to decide if the chargeback would have any prospect of success taking into account the chargeback rules. So, I have considered what both parties have said about the chargeback along with the wider evidence about the scheme rules to decide if Nationwide acted fairly and reasonably in handling the claim.

Chargebacks can only be raised for reasons specified by the card scheme. If a particular dispute doesn't fall neatly within one of those reasons, then it may not be a suitable dispute to raise via a chargeback.

Having considered the reasons for which a chargeback can be raised under Visa's rules, I can't see a reason code that would apply to Mr V's dispute. Mr V's dispute here is essentially with the service provided by A, and that it didn't provide him with the compensation he felt was due to him.

The most relevant chargeback code in the circumstances of Mr V's dispute is "Not as Described or Defective Merchandise/Services". While this reason code is probably most relevant to Mr V's complaint, I don't think a chargeback under this reason code would have had much prospect of success. I say this because ultimately, the flight Mr V purchased (the service) did go ahead and land at Mr V's destination, albeit later than scheduled and their bags missing. Looking at the contract, the named and priced service was the flight to take Mr V from A to B – which as I've said was ultimately provided. I think it likely the card scheme would consider the issues Mr V had with delays and lost baggage as compensatory, which isn't claimable under the chargeback rules.

In addition to this, the Visa rules say that a chargeback under this reason can only be attempted for the "unused" proportion of the service. Because Mr V and his party used the flights, from a chargeback perspective, it would be difficult to conclude that a proportion of the service he received was 'unused'. I understand Mr V disputes this point, stating that he only received a partial service from A as a result of the delays and the lost baggage. But as I've explained, I find it likely that the issues with the baggage and the delays would be seen by the chargeback scheme as ancillary elements to the flight, so I'm not persuaded that these things would likely amount to the service being considered defective or not as described.

If Nationwide had raised a chargeback, based on what we know, I find it more likely than not the claim would have been unsuccessful. I say this because, having considered what happened here, and the scheme itself, I think on balance that S would have successfully defended the chargeback on the grounds that the service that was purchased was provided in line with the agreement made. So I don't think Mr V likely lost out because of Nationwide having not raised a chargeback.

<u>Section 75</u>

Nationwide said Mr V didn't have a successful Section 75 claim either. I've thought about whether it has handled things fairly in the circumstances, and I think it has.

Section 75 allows Mr V to make a claim against Nationwide in respect of the service he paid for using his credit card. However, for Section 75 to apply, certain criteria need to be satisfied relating to things like the parties to the transaction, the way the payment was made and the cost of the goods.

There are certain conditions that need to be met for a Section 75 claim to apply to a purchase. One of these is that there needs to be what is called a debtor-creditor-supplier ("DCS") agreement in place.

While DCS agreements can be a complex subject, for present purposes it means that for Mr V to be able to make a claim against Nationwide under Section 75, he also needs to have a claim against the same entity he paid using his credit card, for breach of contract or misrepresentation.

Mr V made the payment to S. S is an online travel agent, and its role in Mr V's travel arrangements was to arrange for Mr V's entry into contracts of carriage with the airline, A. S was not responsible for the performance of the flights themselves – that was down to A. So, Mr V can only make a Section 75 claim against S.

I note that Mr V thinks that S should in fact be responsible for the actions of A, in ensuring that the quality of the service he received. But Nationwide is required to take into account Section 75 of the CCA when considering Mr V's claim. There is no such provision in the legislation that would require S to be responsible for the actions of A. And so, I can't agree with Mr V's comments here.

Turning to the contract Mr V had with S then; Mr V alleges that the service he received wasn't as described. I can see the booking made was for three flights on 15 November 2024 – while I can see that a time for the flight was listed on the invoice, the contract Mr V entered into with S, states that any changes to the time of the flight is essentially down to A. I don't think it would have been fair to conclude here that S misrepresented the booking on this basis. In addition to this, while I can understand why Mr V would certainly be disappointed by the delay and their luggage going missing, I can't fairly conclude that either of these things would amount to a breach in contract or misrepresentation by S.

In summary, the agreement was for S to book the flights, which I can see it did. The contract also states that anything that goes wrong with the flight itself, as is the case here, isn't its responsibility. So, the things that Mr V says went wrong, i.e. the performance of the flight and the baggage handling, was the contractual responsibility of A and not S. While Mr V may have a claim against A, he can't claim against Nationwide in respect of that claim, because he didn't pay A directly, he paid S. So I can't fairly conclude here that the things Mr V says went wrong, are the responsibly of S, and in respect of the performance of the flight, and the baggage handling, I haven't found that S has breached the contract it had with Mr V or made a misrepresentation.

In terms of the compensation element of Mr V's claim, there are regulations which grant a statutory right to compensation in the event of certain things going wrong with flights, but that a failure to pay that compensation would be a breach of a statutory duty, not usually a breach of contract, and would against the airline and not S. So, it's not normally something that can be claimed for under Section 75, which covers only breach of contract and misrepresentation.

It follows that I don't find that Nationwide has acted unfairly or unreasonably in the way it handled Mr V's claim. However, I will add that this claim is against Nationwide only, it doesn't necessarily mean that Mr V can't potentially make a civil claim against the airline directly – Mr V will need to seek his own advice on this."

Nationwide responded to say that it didn't have anything further to add.

Mr V responded and reiterated the issues he has with the airline. He also set out what Section 75 says about when a claim can be made. He added that he has provided evidence to show that the airline has accepted fault for what happened. And that I should check a search engine and/or the news to see more information about the airline.

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 considered all of the evidence again, I don't uphold Mr V's complaint for the same reasons as set out in my provisional findings.

I note Mr V reiterated the issues he has with the service he says he received from A. I had read and taken into account all of this information, when coming to my provisional decision, and indeed this final decision. If I've not reflected something that's been said in this decision, it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the complaint.

Mr V hasn't provided any additional information for me to consider in response to the provisional decision. And so I see no reason to depart from the findings I made in the provisional decision.

I am aware that Mr V might have evidence that suggests the airline has done something wrong – but this doesn't automatically mean he has a valid claim against S or Nationwide for those things.

In terms of a claim under Section 75, I have already explained in my provisional decision why I don't think S had breached the contract it had with Mr V, or misrepresented it. I don't intend to go over that again here.

I don't doubt Mr V's assertions that the airline got things wrong. And as I've explained, he might have a valid claim against the airline. But in terms of what's happened here, Mr V had a contract with S, and from what I've seen S hasn't breached the contract. So for this reason, I don't think he has a valid Section 75 claim against Nationwide. And as a result, I don't think Nationwide needs to take any further action to reimburse or compensate Mr V.

My final decision

For the reasons set out above, I don't uphold Mr V's complaint.

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

Sophie Wilkinson
Ombudsman