

The complaint

Mr E is unhappy Nationwide Building Society have declined his attempts to recover funds to his credit card which he used to pay for a service he did not receive.

What happened

I issued my provisional findings to both parties setting out why I did not think Mr E's complaint should be upheld, and invited both parties to provide any further submissions in reply to my provisional decision.

The background to this complaint was set out in my provisional decision together with my provisional findings, which are included below and now form part of this final decision.

Background

In May 2024 Mr E travelled abroad, and the day before departure he booked a hire car online to collect at the destination airport. However, on arrival at the hire car office Mr E was told the hire car he had booked was no longer available.

Mr E arranged a hire car with a different company the same evening and the following day raised his concerns with the online booking agent. The online booking agent was unable to obtain a refund for Mr E from the hire car company (rental provider) and so Mr E approached Nationwide to help recover his money.

When Mr E booked the hire car online he paid £173.41 for the car, and he paid a further £72.16 for a no risk warranty provided by the online booking agent.

Nationwide raised a chargeback dispute for Mr E for the total amount of £245.57, but following a rebuttal from the merchant (the online booking agent) Nationwide decided not to pursue the dispute and let Mr E know. Mr E therefore asked Nationwide to raise a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75'). After reviewing Mr E's claim, Nationwide let him know they were declining it.

Two of our Investigators considered Mr E's complaint and concluded there was not enough to uphold Mr E's complaint as they did not find that, in the circumstances, Nationwide had acted unfairly.

Mr E disagreed. To summarise, he said the online booking agent was responsible for what had happened and he had not been treated fairly.

Provisional findings

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

I want to assure both parties that while I have only included a summary of what has happened above, I have reviewed all the available evidence and submissions. And while I

may not respond to every individual point either party has raised, this is because I have focused on what I consider relevant to reaching a fair and reasonable resolution in this matter.

To reach a fair and reasonable decision I have taken into account any relevant law and regulations, regulator's rules, guidance and standards, codes of practice and (where appropriate) what is considered to have been good industry practice at the relevant time.

Mr E approached Nationwide to attempt recovery of his funds by two different mechanisms – chargeback and Section 75. I have considered Nationwide's handling of each of these mechanisms here.

Chargeback

Chargeback is a mechanism by which the card issuer (in this case Nationwide) may be able to, in certain circumstances, recover funds on behalf of the cardholder (in this case Mr E) from a merchant's bank (in this case the online booking agent's bank). Chargeback follows the strict rules of the card scheme provider (in this case Visa). There is no obligation on the card issuer to refund or assist in any way, although it would be considered good practice for them to do so where there may be a reasonable prospect of success.

The card schemes do not fall within the jurisdiction of the Financial Ombudsman Service, so we are unable to require them to run their chargeback in a particular way; however, we are able to consider whether the card issuer has fairly followed the chargeback process.

Given what Mr E told Nationwide – that he had not received the hire car he had paid for - I think Nationwide fairly raised the chargeback under the reason code 13.1 Merchandise / Services Not Received.

Under the chargeback process for that reason code the merchant is entitled to rebut the dispute, and the merchant did so within the required time limits setting out that under the terms of the hire car agreement Mr E had not collected the car on time.

On receipt of this Nationwide let Mr E know they were unable to take Mr E's chargeback any further given the card scheme provider's rules.

It is difficult to know what may have happened had Nationwide taken Mr E's dispute to the final chargeback stage of arbitration for the card scheme provider to decide. But on balance, given the hire car service had been made available to Mr E, as arranged under the terms of the agreement, and it was Mr E who had not collected the car on time or contacted the hire car about being late as the terms of hire set out, it would have been fair for Nationwide to conclude this meant it was unlikely the card scheme provider would have found in Mr E's favour - so in the circumstances it was reasonable for Nationwide not to take the dispute any further.

Nationwide subsequently agreed to consider a claim under Section 75.

Section 75

Section 75 makes the provider of credit (in this case Nationwide) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. I've considered whether, in the circumstances, Nationwide fairly handled Mr E's claim under Section 75.

As part of the Section 75 claim, there are certain criteria that must first be met before

considering whether there has been a misrepresentation or breach of contract.

A like claim against Nationwide does not apply to a claim where the claim relates to any item to which the supplier has attached a cash price not exceeding £100 or more than £30,000.

I noted earlier on that Mr E's total payment to the online booking agent to reserve the hire car comprised of £173.41 for the hire of the car and a further £72.16 for a no risk warranty – as evidenced on the invoice to the online booking agent.

These are two separate items and as the no risk warranty falls below the financial threshold to qualify for a Section 75 claim, I think Nationwide would have been fair to decline the claim for this item. The £173.41 paid for the hire car meets the required financial threshold for the purposes of a Section 75 claim.

A like claim against Nationwide under Section 75 must also have a debtor-creditor-supplier (DCS) agreement in place before a case of misrepresentation or breach of contract can be considered.

I think Nationwide were fair to conclude no DCS agreement existed between them, Mr E and the rental provider. Mr E made no payment to the rental provider - the booking voucher he was provided with by the online booking agent confirmed no payment would be due when Mr E collected the car, and the invoice mentioned earlier confirmed payment was made to the online booking agent.

But I think it would have been fair for Nationwide to recognise there was a DCS agreement between them, Mr E and the online booking agent that Mr E contracted with to reserve a hire car. And that they could fairly have considered whether a breach of contract or a misrepresentation happened in relation to that contract for the amount of £173.41.

I would note at this point that while Section 75 limits Nationwide's considerations of a claim to the online booking agent's responsibilities for the amount identified, this does not take away that liability may exist elsewhere with other parties associated with these events, and so it may be that Mr E would wish to seek independent legal advice as to any other channels of recovery available to him.

In relation this matter, and in light of the above I have therefore considered what Nationwide could fairly have concluded in relation to the amount of £173.41 and the service being supplied by the online booking agent, with regards to whether a breach of contract or misrepresentation had taken place.

Breach of contract

A breach of contract is recognised where goods have not been of satisfactory quality and where services have not been performed with reasonable care and skill.

I understand Mr E's driving point is that a breach of contract has occurred and the terms are unfair because they only allowed a customer a window of 59 minutes to collect the car, but the consequence of not collecting the car within that window was to have no car and no refund.

It might first help to set out that as our service is not a court it is not for me to decide whether a term is unfair, but I have taken into account what Mr E has said as part of my considerations in deciding whether Nationwide fairly handled Mr E's Section 75 claim.

Having done so I've not seen enough to say Nationwide could reasonably have concluded

that a breach of contract had occurred here.

The online booking agent's general terms and conditions explain their role as a marketplace that contracts with different rental products and suppliers around the world, and that their service is to arrange the supply of vehicle hire.

The online booking agent's responsibility was therefore to reserve a hire car for Mr E, and I think with the provision of the voucher confirming this had been done I think they met that responsibility.

I also note that the online booking agent's general terms and conditions set out, *'Once we have passed your reservation over to the Rental Provider, we have no further legal obligations of liability to you and the Rental Agreement for the hire of the Vehicle will be between you and the Rental Provider'*.

The voucher terms supplied by the online booking agent to Mr E set out that *'If you are running late, it is best to notify the Supplier, they will normally hold your Vehicle for 59 minutes after the pickup time, certain Suppliers may be more flexible. Check directly with your Supplier if unsure'*.

The same terms also set out that *'It is recommended to always give your flight number when you book. This will help the Supplier monitor arrivals information and know if there are any delays. In the event of a known delay, you should also provide an update of your new arrival time before departure regardless of providing flight number. Failure to do so may result in your Vehicle no longer being available'*.

The online booking agent's general terms and conditions also say at 4.5: *'Renters who do not turn up at the Collection Point, or who do not turn up in time, are not entitled to a refund. This includes non-receipt of a Vehicle due to insufficient documentation or late arrivals'*.

And at 9.2: *'We will not be responsible for any failure by the Rental Provider to provide the Vehicle, or if the Vehicle is no longer available due to a late arrival of flights, your failure to advise the Rental Provider of delays, or if you fail to provide your flight number in accordance with clause 9.1'*.

In the circumstances, a set time to pick up a hire car is not unusual, and the terms allowed for the individual to take steps to mitigate any lateness through contacting the rental provider directly and sharing their flight number, which is not unusual or unreasonable, or letting them know directly in advance of any likely delay.

Mr E did not arrive at the hire car office until around 8.30pm (around closing time of the hire car office), and the collection time on the voucher was 12pm – so Mr E was around eight hours late. There is also nothing to suggest Mr E made any attempts to contact either the online booking agent or the rental provider to alert them to the fact he would be arriving later than the time set out on the voucher, despite some suggestion this would have been known to Mr E prior to travel given the gate for Mr E's flight was intended to close at 15:20 in the UK.

I have considered that Mr E has suggested the online booking agent is better off because of what happened (because he says they kept the funds and still had the car), but from what I have seen I am unable to agree. There is nothing to show that the online booking agent reserved the exact same car for another customer, and they have shared that due to various costs of providing the service and dealing with Mr E's dispute they have suffered a financial loss on this booking. The sum for the hire car was paid to the rental provider, which the online booking agent attempted to retrieve, but was unsuccessful in doing so.

Taking everything into account I think it would have been fair for Nationwide to conclude no breach of contract had taken place in this case. The online booking agent provided the service of reserving a hire car for Mr E with one of their approved suppliers, and they confirmed this in the form of the voucher Mr E was given. And the terms of pick up were set by the rental provider. Mr E was made aware of this through the online booking agent and what he could do if he was going to be late.

Misrepresentation

A misrepresentation is recognised as a false statement of fact which induces a consumer to enter into an agreement and the consumer suffers a loss because of the misrepresentation.

I've considered what Mr E has said about his understanding of the voucher provided by the online booking agent, and that he understood he could collect the car any time from 12.00 during the hire car's office opening hours. Mr E says it wasn't made clear on the voucher that not arriving at the designated time could result in the hire car not being provided and a loss of the funds paid for it.

I have reviewed the voucher. It sets out Pick up details - *Monday, 27/05/2024 12:00* [location] and the opening hours of the hire car office in the airport terminal as 08:30 - 20:30, together with a contact number for the hire car office, and description of where the hire car office was.

There is no suggestion on the voucher that the pick up time was between the office hours provided and it did not say that it was 'from' 12:00, rather a specific time was given (which as I've noted earlier would not be considered unusual). And I have not seen anything in the available evidence or submissions to suggest the information on the voucher presented a false statement of fact. As already noted above, the voucher terms referenced checking with the hire car supplier if unsure about pick up times and how to mitigate any potential problems with arriving late.

In the circumstances, I think it would've been fair for Nationwide to conclude there was no misrepresentation here.

I realise this will be a disappointment to Mr E, but I've not found anything to persuade me that Nationwide acted unfairly in their handling of the chargeback, or how they handled the Section 75 claim reaching their decision to decline it, given it would have been fair for them to conclude there was no breach of contract or misrepresentation.

Responses to my provisional decision

Nationwide replied to my provisional decision confirming they had nothing further for me to consider. And Mr E did not respond to my provisional decision.

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.

As the deadline set out in my provisional decision has now passed and because neither party has provided me with any further evidence or submissions to consider, I see no reason to depart from the conclusions reached in my provisional decision.

That is, for the reasons above, I have not seen enough to persuade me that Nationwide

were unfair in their handling of Mr E's chargeback or Section 75 claim.

My final decision

For the reasons above, my final decision is that Mr E's complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 16 March 2026.

Kristina Mathews
Ombudsman