

complaint

Mr A complains about how Nationwide Building Society handled his chargeback request for a holiday that he said wasn't as described. Mr A is supported in his complaint by Ms L.

background

Mr A and his partner went on a holiday, a significant part of which they found very disappointing. When they returned, Mr A asked Nationwide to make a chargeback request for three transactions he had made to pay for the holiday. He asked Ms L to manage this process for him. At first, Nationwide said that it couldn't make a chargeback request when it was just the quality of the holiday that was in dispute. But Mr A's representative said that the holiday wasn't as described, and Nationwide could make a chargeback request for that reason.

There was some difficulty in registering Ms L as a third party who was assisting Mr A with this issue. By the time Ms L was registered as assisting Mr A, the deadline to make a chargeback request was looming. Ms L told us that she was put to some trouble to submit evidence for this as a matter of urgency. Nationwide has offered Ms L £100 to apologise for that. Ms L refused this offer at that time.

Nationwide submitted a chargeback request for Mr A. That request had reached its final stage, and was waiting for a decision by the card scheme operator which adjudicates in these cases, when Ms L told Nationwide that Mr A wanted to stop the chargeback. He had accepted an offer from the holiday company, which was dependent on him withdrawing his chargeback request. So the request was withdrawn.

Our investigator upheld this complaint in part. She said that Nationwide made a mistake when it turned the chargeback request down at first. Chargebacks can be made over quality issues. Although Nationwide did raise the request eventually, our investigator thought that the delay was frustrating for Mr A, and she appreciated that he had to contact the bank a number of times. So she thought Nationwide should pay him £100 in compensation.

Our investigator noted that Ms L said there had been a delay in appointing her as a representative. Nationwide has offered Ms L some money for that. But this service can't award compensation to a representative who is supporting someone else in their complaint for any inconvenience that representative faced in doing so. And any delay didn't seem to inconvenience Mr A. So our investigator made no award on this point.

Our investigator said that Nationwide did submit a chargeback. And when the holiday company resisted it, Nationwide proceeded to pre-arbitration. The holiday company resisted again, so Nationwide then made the chargeback request. Nationwide can't do more than that.

Mr A asked Nationwide to withdraw the request so he could accept a settlement offer from the holiday company. Our investigator said that she appreciated that Mr A felt he had to accept the offer because of how Nationwide handled his request. And he couldn't be sure the request would be successful. But our investigator didn't think that Nationwide had damaged the chargeback's chances of success in any way. This chargeback didn't succeed because Mr A withdrew it. And our investigator said that she thought if it had gone ahead, it was likely to have failed. So our investigator said she didn't think Nationwide had to do more than pay Mr A £100.

Mr A and his representative agreed to that. And Nationwide agreed to make the payment. But then Ms L wrote again on Mr A's behalf, to say that she thought that Mr A's chargeback would've failed because Nationwide hadn't submitted all the evidence she sent it. That's why Mr A withdrew his chargeback request. She wanted us to ask Nationwide what it had sent to support Mr A's request.

Our investigator said that the chargeback failed because Mr A withdrew it. It wasn't relevant to consider what Nationwide sent as evidence, because the card scheme operator never had a chance to consider it. And our investigator still thought that, because of the strength of the defence, this chargeback would've failed.

Ms L still thought the chargeback would've failed because of the way Nationwide handled it, and she didn't think that our investigator could predict the outcome of the chargeback. She said her evidence proved the defence to be unreliable. Ms L thought that Mr A had withdrawn his chargeback because he had lost confidence in Nationwide's professional ability. If Nationwide hadn't submitted all of the evidence Ms L supplied, then she thought it had lost him the chance of financial redress, and it should pay him back the money he spent on his holiday.

Because Mr A and his representative didn't agree with our investigator, the case was passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reached the same conclusion as our investigator on this complaint, and for broadly the same reasons.

When Ms L first responded to our investigator's view, she said that she would like to accept the offer made to Mr A on his behalf, and the offer made to her. Our investigator has explained that this service can't make any award to Ms L for inconvenience she may have experienced when acting as Mr A's representative. For that reason, I won't comment on the offer of £100 which Nationwide made to Ms L. This forms no part of my decision, and remains an issue solely between Nationwide and Ms L.

I think that Nationwide made a mistake when it said it would be unable to make a chargeback for Mr A because the dispute was over a quality issue. There is, as Mr A's representative and our investigator both noted, a code which can be used to attempt a chargeback in these circumstances. I agree with our investigator that this mistake caused Mr A some inconvenience. I think that the amount of £100 which our investigator suggested is sufficient to make up for that. That's in line with what I would've awarded for this element of Mr A's complaint, if our investigator hadn't already suggested it.

I haven't seen anything to suggest to me that Mr A was substantively inconvenienced by any confusion around the appointment of Ms L as Mr A's representative. So I make no award for that.

I appreciate that Nationwide caused some delay in the submission of Mr A's chargeback request, but the request was submitted before the deadline. Nationwide then withdrew it, because Mr A asked it to.

Ms L wanted us to ask Nationwide if it had submitted all the pieces of evidence that she had sent it. I haven't done that. I agree with our investigator that this just isn't relevant, because Mr A withdrew his chargeback request before any evidence was considered.

Ms L says that this is relevant, because she says that it would show if Mr A was right to lose faith in Nationwide. And if Mr A hadn't lost faith in Nationwide, he would've gone ahead with the chargeback. Which she thinks he had a good chance of winning.

But I could only fairly ask Nationwide to pay Mr A the money he would've recovered from this chargeback if I thought that it was Nationwide's fault that he didn't get that money. I might think it was Nationwide's fault he didn't get the money, if I thought that Mr A did have a good chance of succeeding with his chargeback request, and that something Nationwide had done had damaged his chances of success. So I'll consider those points.

I'll start by thinking about whether Mr A had a good chance of succeeding with his chargeback request. Ms L says he did, because the evidence she has supplied refutes many of the points that the holiday company has made. But I'm afraid I don't agree that the case which Ms L has put forward is as strong as she considers it to be. Some of the evidence she has offered just seems to me not to be relevant to this chargeback.

Ms L has supplied a number of excerpts from call recordings which she says prove how the holiday company described the service it provides. But those call recordings weren't made by Mr A. They don't tell us what the holiday company may or may not have promised him. And, more importantly, at least some of those recordings don't appear to have been made at the time that this holiday was booked. So they are only evidence of what the holiday company has said more recently, about holidays it provides now. The holiday company has been clear that it has made a number of changes after the trip Mr A had, so these more recent descriptions don't provide any evidence of whether the trip Mr A went on was correctly described at the time.

I've considered the evidence that Ms L supplied carefully, and also looked at the evidence that the holiday company supplied to refute the chargeback. I agree with our investigator that the holiday company has mounted a strong defence. I've also explained that I don't think that the case put forward on Mr A's behalf is as strong as Ms L has suggested. For those reasons it's my view that if this chargeback request had gone ahead, it is likely that it would've failed. In those circumstances, I couldn't fairly ask Nationwide to pay Mr A the amount that he was seeking through this chargeback request.

I should also say, for completeness, that I haven't seen anything that makes me think that Nationwide has done anything which would prejudice Mr A's chances of success in making this request. So, if Mr A chose to take a settlement and withdraw his request, I don't think that is Nationwide's fault.

For the reasons I've set out above, I don't think Nationwide has to pay for Mr A's holiday.

I know Mr A will be disappointed, but I don't think Nationwide has to pay more than the £100 our investigator initially suggested.

my final decision

My final decision is that Nationwide Building Society must pay Mr A £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 April 2018.

Esther Absalom-Gough
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