

complaint

Mrs B complains that Nationwide Building Society hasn't done enough to help her recover a credit card payment.

Mrs B is represented by a family member, Mr B.

background

In March last year a third party, that I'll call V, took a payment of nearly £2,000 from Mrs B's account using a second card issued in Mr B's name. Mr B says this payment wasn't due or authorised. Mrs B asked Nationwide to get it back using the chargeback scheme.

Nationwide says it asked the financial business that processed V's payment to look into the matter. It responded saying V considers Mr B owes the money it took, for property management services provided abroad. Nationwide didn't think it had enough evidence to challenge that so it has done all it can under the VISA scheme rules. Nationwide considered whether the payment should be refunded under legislation about payment services and section 75 of the Consumer Credit Act 1974 (CCA). But, it concluded neither applies in these circumstances and it couldn't do anything further to assist Mrs B.

Our investigator doesn't recommend the complaint should be upheld. She says we don't focus on the underlying dispute when we consider chargeback complaints – we look instead to see if the bank made a reasonable attempt to start the chargeback process. She's satisfied that Nationwide did so here but V defended that successfully. And she's not persuaded Nationwide was obliged to do more than it has already.

Mr B says V changed the terms and conditions of his property management agreement without proper notice – so he was entitled to end that immediately. He considers V applied some fees and charges incorrectly and it was wrong to retain deposits. He says he didn't authorise the payment and he gave Nationwide enough information to see that V wasn't entitled to this money. He feels Nationwide could have done more and it should refund the disputed payment. So he asked for an ombudsman to review Mrs B's complaint.

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'm sorry to disappoint Mrs B but I've come to much the same conclusions as our investigator for broadly the same reasons.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I have spoken to Mr B and I can see he feels strongly about what happened. I want to assure Mr and Mrs B that I have considered everything that's been provided. I hope they'll understand if I concentrate on what I think is material in this decision. If I don't mention something specifically that's not because I haven't thought about it – it's just that I'm not persuaded I need to address everything that's been said or sent in order to reach a fair and reasonable outcome.

I think it might be useful to set out a brief summary of how the chargeback scheme works at the outset. Chargeback is a way of settling disputes when there's an issue over a card payment. The process is operated by the card scheme provider – which is VISA in this case. And it allows the customer to ask for a transaction to be reversed in certain situations – if say, there's a problem with goods or services.

I think it's important to note that there's no automatic right to a chargeback and no guarantee it will lead to a refund. Having said that, we would generally expect a bank to attempt a chargeback – if it looks like having a reasonable chance of success.

I've looked at Nationwide's notes to see what it did when Mrs B got in touch about the disputed payment. They say Nationwide initiated a chargeback with the financial business that dealt with the payment on V's behalf. V seems to have responded fairly robustly saying it took the money for payments due on Mr B's account, he was in breach of the agreement for ending without proper notice, the account had been in arrears for several months and it spoke to Mr B before taking the money.

I appreciate Mr B says that's not true. He says some of the documents V supplied in support aren't complete, he didn't authorise the payment and it was V that changed the agreement terms and conditions without proper notice. He refers to some of the charges applied over previous months which he says are incorrect, he doesn't see why V has retained deposits when he's ended the agreement and one of his accounts with V was in credit. He accepts V is owed some money but says it took much more than is due.

I understand Mr B feels he has a strong case. And I can't say he wouldn't be able to prove that if the matter was looked at by a court – where evidence can be challenged and parties cross examined. But, the way the VISA scheme operates means it was up to Nationwide to decide if it should take things further here – based on the information it had at the time.

Nationwide says Mr B and V provided two opposing versions of events. And, looking at the documents they provided, it couldn't conclude with any certainty that the payment wasn't justified. I've considered the paperwork Nationwide had at the relevant time. On balance, I can't say it's more likely than not a chargeback would have succeeded if Nationwide had taken it further. So, I can't fairly find Nationwide has done something wrong. And I'm unable to reasonably require it to give Mrs B a refund.

I think it was reasonable of Nationwide to consider whether it might be possible to refund this transaction under other legislation relating to payment services. I don't think it was wrong to conclude that this didn't help Mrs B in these particular circumstances, as V isn't in the European Union.

I'm satisfied Nationwide also looked into whether it might be possible for Mrs B to raise a claim under section 75 of the Consumer Credit Act 1974. This allows a provider of credit (like Nationwide) to be held equally liable with a supplier (like V) for misrepresentation or breach of contract, in certain circumstances.

I don't think the specific sort of debtor-creditor-supplier relationship required by section 75 was in place here – because the credit was used to finance an agreement between Mr B and V and the payment was taken on a second card in Mr B's name on Mrs B's account. So I'm not persuaded I can fairly find that Nationwide was wrong to tell Mrs B it couldn't consider her complaint under this legislation.

I realise this is all very frustrating for Mrs B and Mr B. I can understand their disappointment at what's happened. But, having considered the circumstances carefully, I'm not satisfied Nationwide has acted unfairly or unreasonably. So, I'm unable to uphold this complaint or require Nationwide to do anything further.

my final decision

For the reasons I've given above, my decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 24 May 2018.

Claire Jackson
ombudsman