

complaint

Mr B complains that Nationwide Building Society ("Nationwide") have rejected his claim for compensation under section 75 Consumer Credit Act (1974) ("s75").

background

Mr B bought an annual train season ticket for £4,576 in July 2018 using his Nationwide credit card. But in July and August there was industrial action and the train timetables were amended and some services were cancelled.

So Mr B decided not to travel on those days and as there was further industrial action later in the year he didn't travel then either. All in all, Mr B said there were 13 days when he chose not to use the service when other means were more viable. He asked the train service to refund his ticket cost on a pro-rata basis. But the train service refused. They said they'd put on a bus service where necessary and as his season ticket was for the whole year they wouldn't have expected him to travel every day.

Mr B therefore asked Nationwide to refund part of his ticket price as he said that, under the terms of s75, they were jointly liable for any breach of contract and here there'd obviously been one. But they rejected his claim as, for many of the same reasons; they thought the contract hadn't been breached.

When Mr B referred his complaint to this service our investigator reviewed the evidence and agreed with Mr B. He noticed that the "*delay repay*" section of the contract set out how much compensation a passenger would receive for different lengths of delay. Mr B had explained that his daily trip to work involved getting a train from home to a station I'll call "W" and then a further train to his final destination. It was the first part of his journey from home to W that had been replaced by an hourly bus service. The usual train service was half hourly. The investigator explained that it was difficult to establish if the changes to the first part of the journey meant that Mr B wouldn't have been able to make it to W in time to catch his connecting train. But he thought that on balance, because the bus service was less frequent, Mr B would have been delayed and should receive some benefit under the "*delay repay*" scheme. He thought it would be fair to suggest 50% of Mr B's pro-rated train fare should be refunded by Nationwide.

But Nationwide disagreed. They said there hadn't been a breach of contract because alternative transport had been provided and if Mr B used it and had been delayed he could have made a valid claim. They said the passenger charter for the railway in question said that where an emergency or amended timetable was in place, delays would be calculated on these amended times. So they suggested that delays may not have been evidenced. So Nationwide asked for a final decision by an ombudsman.

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 persuaded that a breach of contract has occurred and Nationwide should therefore provide a limited refund. Please let me explain why.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome

When something goes wrong and the payment was made, in part or whole, with a credit card, it might be possible to recover the money paid through a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, a finance provider can be responsible for a breach of contract or a misrepresentation made by the supplier. So in this case, if there was a breach of contract then Nationwide should refund some, or all, of Mr B's outlay on the season ticket.

was there a breach of contract?

I'm persuaded that s30 of the National Rail Conditions of Travel, that refers to the consumer's right to a refund if their travel is delayed or cancelled, does apply to Mr B irrespective of the fact his ticket is a season ticket. I say that because the definition given to "Ticket" in the appendices of those conditions says:

"Ticket – any physical or electronic document or record which entitles a passenger to make a journey ... between the stations or zones indicated..."

And I understand Mr B's "Ticket" did entitle him to make a journey between the stations in question.

Nationwide has also argued that, as the train service provider arranged a bus service this meant the contract had not been breached. But I don't think that's reasonable in these circumstances. I say that because the replacement service was not the same as the one it replaced. It was half as frequent, and probably slower, and I think it's most likely that it would therefore have caused a significant delay to Mr B's travel plans and it would therefore be unreasonable to suggest it was a comparable service.

Nationwide have also suggested the train services website says any delay resulting from strike action is excluded. But this isn't referred to in the National Rail Conditions of Travel or in the train company's passenger charter. Here it's clear that:

Nationwide have suggested there's not been a delay because he didn't actually travel but I don't think it's reasonable to suggest Mr B *had* to experience a delay in order to make a claim. It's clear he made an informed choice that, given the changes to the timetable that he was unaware of when he bought his ticket, it was best not to travel.

I can see that the charter explains that were an emergency or amended timetable in place, delays will be calculated on the basis of that amended timetable. This doesn't mean that Mr B wasn't delayed or the new timetable didn't impact him. Here, having considered all of the factors, I'm persuaded that Mr B's delays would have been most likely to be more than 30 minutes and I think a refund of 50%, for the trips Mr B says he didn't make, is appropriate.

I can see that Mr B has been sensible in his suggestion about which trips were affected. He's explained that he's only included trips where the timetable was significantly reduced and the journey time substantially increased. For those 13 days I'm persuaded that it's most likely Mr B's level of delay would have been in the region of 30 minutes per trip and a 50% refund is therefore appropriate in the circumstances.

my final decision

For the reasons I've given above I uphold this complaint and tell Nationwide Building Society to allow Mr B's claim under section 75 Consumer Credit Act (1974) and refund £163.88, that being the 50% of pro-rata refund using the Delay Repay table for the thirteen days of affected travel. It should add 8% simple interest per annum from the date the season ticket was purchased to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 June 2019.

Phil McMahon
ombudsman