

The complaint

Mr A complains that Nationwide Building Society won't meet his claim for reimbursement of costs he incurred due to fuel contamination in his car. He paid for the fuel using his Nationwide debit card.

What happened

In May 2023 Mr A used a supermarket pay-at-pump facility to add fuel to his car. He paid £14.03 using his Nationwide debit card. Mr A describes that soon after, his car began misfiring. A mechanic diagnosed the problem as being due to contaminated or defective fuel. They undertook work to rectify the damage to Mr A's car, which cost him a further £470.29.

It's not clear whether Mr A has sought to recover his costs from the supermarket that supplied the fuel. But Mr A did approach Nationwide with his claim for reimbursement, referencing what he believed to be breaches of the Consumer Rights Act 2015 ("CRA").

Nationwide told Mr A it couldn't help. It said that an automated fuel dispense transaction such as the one Mr A undertook wasn't something it could raise on his behalf under the chargeback process, because the card scheme (Visa) rules excluded this type of payment. Nationwide suggested Mr A might raise his concerns directly with the supermarket or with his car insurer, to see if that enabled him to resolve matters.

Mr A was unhappy with Nationwide's response. He brought his complaint to us. In addition to the points he'd made in his Nationwide claim, Mr A expressed his view that the supermarket and Visa hadn't met obligations under the Consumer Protection from Unfair Trading Regulations 2008 ("CPUTR"). He made the point that the fact there were some situations that aren't covered by chargeback wasn't made clear and prominent, referencing – among other things – a broadcast interview that he considers supports his position.

Our investigator wasn't persuaded that Nationwide had dealt with Mr A unfairly. He noted that while Nationwide should have referenced the chargeback reason relating to defective goods or services rather than the one relating to goods or services not being provided, the latter had been the reason given by Mr A when he submitted his claim. The investigator also found that for either reason, the relevant Visa card scheme rules¹ excluded claims in relation to automated fuel dispense transactions; which was the explanation Nationwide had given for not progressing Mr A's claim.

The investigator made some further observations in light of concerns Mr A had expressed. He noted that even if a chargeback claim had been permitted, the card scheme rules would have limited it to the £14.03 Mr A had paid at the pump. There was no basis on which Mr A would have been able to recover his additional costs. The investigator also explained that we were unable to look into the actions of Visa or the supermarket in terms of the allegations raised about CPUTR and CRA compliance. Neither party was covered by our scheme.

Our investigator did set out his opinion on whether Nationwide was obliged to provide

¹ Visa Core Rules and Visa Product and Service Rules April 2023

information about what was – and wasn't – covered under the card scheme rules. He said Nationwide had explained that it wouldn't have provided Mr A with this information when he submitted his claim. The investigator also noted that when Nationwide did provide an extract from the card scheme rules, this had been an outdated version. But the investigator was satisfied that neither aspect would have caused any detriment to Mr A.

Mr A didn't accept our investigator's conclusions. He's asked for this review, as he's entitled to under our rules. In doing so, Mr A said he wanted to draw my attention to the following points:

- His contention wasn't solely about the dispute with the merchant but with how Nationwide handled the chargeback request related to the faulty fuel transaction. The focal point was Nationwide's process and their adherence to chargeback scheme rules
- The argument that this complaint is solely against Nationwide and not Visa seemed to disregard the fact that the challenge pertained to the information disclosure related to Visa's dispute scheme rules. The lack of clear information from Visa was a significant factor influencing his ability to make an informed claim. This information absence impacted the process and subsequent dispute handling by Nationwide
- The investigator mentioned that the chargeback scheme doesn't allow claims for consequential loss incurred from the disputed transaction. This is understood, but the crucial matter here was the categorization of the dispute. The decision to treat the dispute as 'Invalid Dispute' under Dispute Condition 13.1 [goods/services not received] wasn't in line with the actual nature of the issue. The defective fuel was mistakenly categorized, impacting the validity of the claim
- The reliance on outdated or incomplete scheme rules shared by Nationwide could have influenced the investigation. It was a critical factor impacting the understanding of the chargeback process and Nationwide's decisions.

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.

I'm conscious Mr A has made a data subject access request ("DSAR") to Nationwide, which he feels might elicit information relevant to his case. For the avoidance of any doubt, I'm satisfied that I have all the necessary information for me to reach an appropriate outcome to the complaint. As a result I am proceeding with my decision.

I don't doubt Mr A's belief that the supermarket fuel was contaminated. That hasn't been properly established, though the evidence from his mechanic may point in that direction. But it's not for me to investigate that matter. It is a dispute between him and the supermarket. The issue I'm required to determine is whether Nationwide has any liability to Mr A for what happened, or if it should have done more to assist Mr A in recovering his losses.

Does Nationwide have any liability to Mr A for the losses he's incurred?

Mr A paid by debit card, rather than credit card. Although there may be grounds for connected lender liability when a credit card is used², these don't apply when using a debit card.

A bank doesn't generally adopt liability for the actions of an independent third party simply because the customer paid using their debit card. But it might be able to assist its customer in claiming a refund (up to the transaction value) from the retailer under the chargeback scheme. Where a chargeback right exists and there's a reasonable prospect of success, as a matter of good practice I'd expect a card provider to attempt to assist its customer by raising a dispute.

Here, however, the card scheme rules explicitly exclude the type of transaction Mr A undertook. So I'd expect Nationwide to explain this to Mr A, which is what it did. That was the correct approach, even if the chargeback reason should have been in relation to whether the goods/services were defective, rather than whether they were provided. As our investigator observed, both reasons contain the same relevant exclusion for automated fuel dispense transactions. And I see nothing to detract from that position although the extract from the card scheme rules Nationwide provided in support of its position was the wrong one. While that shouldn't have happened, Mr A's strength of feeling and the other arguments he's sought to make lead me to conclude that if Nationwide had provided the correct extract, Mr A would have taken any different action in pursuing his complaint.

Was Nationwide under an obligation to make the chargeback terms clear to Mr A at the outset?

I accept Mr A's point that his contention hasn't been fully addressed in our investigator's assessment. He firmly believes that the legislation to which he's referred, as well as other regulations surrounding the provision of key information, suggest that he should have been told of any limitations in the chargeback scheme when he was provided with his account – or at least, the Visa debit card to use with his account. Our assessment addressed whether this information should have been provided when Mr A attempted his chargeback claim, but that isn't quite what Mr A has said.

Nationwide's response to us on that query – which it also provided to Mr A – states that *"The condition and terms of [the chargeback rule] would never be presented to [the cardholder] before submitting the claim to us"*. In other words, Nationwide has said that it did not provide details of the card scheme rules when it provided Mr A with his account or the debit card, as is common to Mr A's own recollection. The key question, however, is whether I would expect it to do so as a matter of course.

As I've mentioned, Mr A has provided a link to a broadcast interview that he considers supports the argument that this information should have been provided from the outset. Having listened to the broadcast using the link provided, I don't think it helps Mr A. The broadcast in question is an interview with an Ofcom representative in relation to a number of disputes that commonly arise under mobile phone agreements. Although there is an aspect of the conversation that explains about the need to provide clear and transparent information when entering into a contract, I don't share Mr A's interpretation that this directly reads across to information about the chargeback scheme.

² For example, section 75 of the Consumer Credit Act 1974 – although the transaction amount in this case was less than the lower financial limit so even if Mr A had used a credit card for his fuel purchase, he would not have met the criteria for a claim

The ability to raise a claim via the chargeback process isn't a contractual right held by Mr A. As a cardholder, he has no contract with Visa. To address his point in rebuttal of our initial assessment, it is for Mr A to seek out any information about the scheme rules should he consider it necessary, rather than an obligation on the card scheme. I don't accept that the fact he didn't have this information from the card scheme has any bearing on the way in which he was able to make an informed claim, save that it might have meant he would have known slightly earlier that he couldn't make a successful claim at all.

Nationwide is a member of the Visa card scheme and as such, it has the ability to raise claims on behalf of its cardholders, subject to the caveats I've mentioned previously. But as it isn't a key contractual term or right, there's no obligation on Nationwide to have drawn to Mr A's attention any aspect of the card scheme rules when he entered into the agreement or before he started using the card.

I consider the Financial Conduct Authority ("FCA") 'appropriate information' rules set out in its Banking Conduct of Business Sourcebook ("BCOBS") and the 'Information Requirements' in Part 6 of the Payment Services Regulations 2017 ("PSR") may hold relevance to this aspect of Mr A's complaint. The PSRs³ say that payment service providers should give general information about the conditions for the payment of any refund for payment transactions initiated by or through a payee⁴.

But this only extends to transactions where a payment amount has not been specified or exceeds the amount that a user might reasonably have expected. Nationwide's current account terms and conditions appear to meet this obligation, and in any event neither of these applies to Mr A's situation.

BCOBS 4.1 (which can be found online in the FCA Handbook on its website) says that:

"4.1.1R A firm must provide or make available to a banking customer appropriate information about a retail banking service and any deposit made in relation to that retail banking service:

- (1) in good time;*
- (2) in an appropriate medium; and*
- (3) in easily understandable language and in a clear and comprehensible form;*

so that the banking customer can make decisions on an informed basis"

and that:

"4.1.2G(1) In determining:

- (a) what is "in good time";*
- (b) the appropriate medium for communicating information; and*
- (c) whether it is appropriate to provide information (that is, send or give it directly to the banking customer) or make it available (that is, make it available to obtain at the banking customer's option);*

a firm should consider the importance of the information to the decision-making process of the banking customer and the time at which the information may be most useful."

³ See Schedule 4, Part 5(g)

⁴ PSR Regulation 79

In light of the above I don't consider it would be reasonable for me to conclude that Nationwide – or any other card provider – should provide cardholders at the outset with the card scheme rules under BCOBS or PSR provisions, or even as a matter of good practice. The current rules extend to some 930 pages, and I can't accept that it would be helpful to most consumers if I were to hold such an expectation.

Rather, I find that the way Nationwide provided the key information about the chargeback rules to Mr A – that is, at the point he sought to pursue a chargeback claim and provided details of the nature of that claim – meets the requirement of making the appropriate information available to him at the time when that information was most useful. Even if Nationwide could identify that Mr A uses his card for pay-at-pump transactions, I can't see that it would be necessary to issue a warning that such a transaction would be outside the scope of any chargeback claim that might arise from him doing so.

Further, if that had been the case, Mr A would presumably not have been expecting to have to make a claim about the fuel he was putting in his car. He would most likely have continued to use his card anyway or used cash to pay at the kiosk (assuming it was available to him to do so). Either way, his only recourse would be to take up the dispute with the supermarket, which is the position he is in currently.

Did Nationwide mislead Mr A into the belief that he would be covered by using his card?

I'm aware that card providers (and media) often suggest making payment by card as a means of assisting with payment recovery in the event of a dispute with a retailer.

Mr A hasn't suggested that at any point Nationwide indicated that irrespective of any transaction dispute he might have at any time with a retailer, he would be able to recover money via chargeback. At best, the general representations made are that making payment by card *might* provide a way of doing so. I find no evidence to support a finding that Nationwide misled him in this respect.

My final decision

For the reasons I've set out, my final decision is that I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 March 2024.

Niall Taylor
Ombudsman