

The complaint

Mrs B complains about how Nationwide Building Society (“Nationwide”) dealt with her request for a refund.

What happened

Mrs B paid £350 on her Nationwide debit card in September 2022 to book a holiday with a company I’ll call “A”. She was due to travel in March 2023. Unfortunately, A went into administration which meant Mrs B couldn’t go on the trip.

Mrs B contacted Nationwide to ask for help. They raised a chargeback for her on the grounds that she wasn’t going to receive the service from A as they had entered administration. However, A’s bank defended the chargeback. Nationwide challenged the chargeback by going to pre-arbitration, but this was declined again by A’s bank.

Nationwide said the chargebacks were declined at both stages on the grounds that all refunds should be provided through a bonding authority or a financial failure insurance scheme. Nationwide’s position was that they wouldn’t take the matter any further as Mrs B hadn’t provided evidence to show the bonding authorities and the insurance providers rejected the refund.

Our investigator recommended that the complaint should be upheld. She thought Nationwide should have given Mrs B the chance to respond to the defence as she likely would have explained that she couldn’t retrieve her money through a bonding authority and wasn’t getting anywhere with the insurance provider. And she noted that Nationwide had already set out that Mrs B wasn’t covered by the bonding authority in the chargeback claim, so felt it wasn’t helpful to say she could make such a claim in their response to the complaint. She thought Nationwide should refund the £350 and add 8% simple annual interest from the date the payment was made to 5 January 2023 which was the date Nationwide said they wouldn’t take the matter further.

Nationwide disagreed. They said A’s bank defended the chargeback on the basis that they weren’t paying refunds through the chargeback process and that all customers should seek to claim their refund through bonding authorities or their insurance company.

As the matter remains unresolved, Mrs B’s complaint has been passed to me to decide.

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.

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It’s not a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed.

It's not disputed that the services weren't received in Mrs B's case. And there's a chargeback condition for these sorts of scenarios. The card scheme rules say that for disputes related to non-receipt of travel services from a provider that is insolvent or bankrupt the issuer must attempt to obtain reimbursement from the relevant bonding authority/insurance scheme (where applicable) unless the bond or insurance scheme is insufficient. It says if the bond or insurance scheme is insufficient, the issuer may use information in the public domain to initiate the dispute.

Here, Mrs B received no help from the chargeback claim because Nationwide ultimately said that she needed to raise her claim through the relevant bonding authority or the insurance company. However, Mrs B wasn't entitled to refer her claim to a bonding authority as her purchase didn't include flights. And Mrs B didn't receive any help from the insurance company because they told her that she should raise a claim with her bank, namely Nationwide. This meant she was going around in circles with no-one prepared to refund her for something she didn't receive.

Nationwide raised the chargeback and took it to pre-arbitration, which was fair from them to do. But they didn't, in my view, allow Mrs B time to present further evidence to them when the chargebacks were declined. I think, had they done so, Mrs B would have told them that the insurance company had directed her back to her bank. And, as I've mentioned, Nationwide already knew that a refund couldn't be obtained through a bonding authority.

I don't know for certain what would have happened had Mrs B been allowed the chance to provide her reasons in response to the defended chargeback claims. But I think there would have been a reasonable prospect of success had Nationwide taken the chargeback further given the instructions (and decline reasons) from A's bank. And I think the relevant chargeback rules appear to cover these sorts of scenarios.

I think it would also be helpful for me to set out the relevant extract from the card scheme rules. This rule applies to transactions within Europe (as was the case with Mrs B's payment), and says:

*"For a Dispute related to non-receipt of travel services from a provider that is insolvent or bankrupt, if the services are covered by a bonding authority/insurance scheme, **the Issuer must attempt to obtain reimbursement from the relevant bonding authority/insurance scheme, unless the bond or insurance scheme is insufficient. If the bond or insurance scheme is insufficient, the Issuer may use information in the public domain to initiate the Dispute.**" [my emphasis in bold]*

Nationwide's position was that Mrs B needed to contact any bonding authority for reimbursement, or otherwise to demonstrate how she found out the retailer wasn't bonded. But the rule in question clearly said it is for the Issuer – that is, the card issuer – to attempt this. I've also not seen anything from Nationwide as the Issuer to show that they attempted to obtain reimbursement through the insurance scheme, despite this being a key requirement of the relevant dispute condition.

I'm aware that the card scheme rules were updated on 15 April 2023 and that this rule now includes the card holder as well as the Issuer. But the rule at the time Nationwide dealt with Mrs B's claim included no such provision about the card holder.

A debit card issuer doesn't automatically adopt liability for the failings of a merchant. But it should take care when asked to assist with a chargeback to ensure all necessary information is submitted. And it should be able to demonstrate that any steps it does take accord with the grounds set out in the card scheme rules.

Overall, I don't think Nationwide handled the claim as well as it could have done. I find there was a reasonable prospect of success had Nationwide continued to pursue the chargeback. And I don't think Nationwide considered the scheme rules appropriately. As such, I think it's fair that Nationwide should reimburse Mrs B with £350. I also think it fair that Nationwide add interest on this amount from the date they re-debited the money from Mrs B's account (which is slightly different to what our investigator recommended but constitutes when Mrs B was deprived of the use of the monies) to the date of settlement.

My final decision

My decision is that I uphold this complaint and direct Nationwide Building Society to refund Mrs B £350. Interest should be added on to this amount at a rate of 8% each year simple, from the date they re-debited the money from Mrs B's account to the date of settlement.

If Nationwide Building Society considers that it's required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs B how much tax they've taken off. They should also give Mrs B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 15 May 2024.

Daniel Picken
Ombudsman