

## The complaint

Mr K complains about how Nationwide Building Society (“Nationwide”) handled a claim he made in relation to a transaction on his credit card.

## What happened

Mr K purchased a four-day cruise holiday, through a company I’ll refer to as “S”, using his Nationwide credit card in April 2023. He purchased the cruise for himself and four family members. The total cost of the cruise was £1,471, however Mr K received a refund of £34.90 due to a work discount. So the total amount Mr K paid for the cruise was £1,436.10. Mr K says due to technical issues, he made the booking via phone. The cruise took place in May 2023. I’ll refer to the provider of the cruise holiday as “F”.

In June 2023, Mr K complained to F. He said when purchased the cruise, he was told the professional photo experience could only be purchased on the cruise ship. Mr K said he purchased this for £92 onboard and this included some digital prints. He said his credit card was charged a further £91 followed by four transactions of £1 each. He said he didn’t authorise a £95 payment and it was therefore fraudulent. Mr K said the additional prints were expensive, so he said he would download these and have them printed in the UK. However, he said the digital prints weren’t provided. He said he purchased the cruise to have the professional photo experience and this ruined his trip.

Mr K also said prior to boarding the cruise as he was travelling with his child, without the other parent present, he contacted F and checked its website. He said upon arrival to the cruise terminal, F told him to fill out a form and said it needed to be signed by the other parent. He said although he understood and had no objections to this, this caused inconvenience and had an emotional impact on him. He said luckily he had legal documents on him which allowed him to take his child out of the country. He said he was told once on board he could have his documents back, but it appears these were lost by F. Mr K also said he registered his child for the kids club and printed a copy. But he was told he needed a child identification tag. He said he was told the printed copy wasn’t enough and had to fill out the form again. Mr K said this took two hours and was inconvenient. Mr K said he wanted a full refund of the cruise holiday of £1,623.10. Mr K also complained to Nationwide.

Nationwide issued its response to Mr K’s complaint in January 2024. It said it raised a chargeback and the payments for the £92 for the professional photo experience and transaction for £91 were successfully claimed back. It wrote off the additional £4 of charges. However, it said Mr K’s claim for the cost of the cruise holiday was unsuccessful as S said Mr K hadn’t contacted it directly and Mr K received the cruise he paid for. It said it couldn’t raise a claim under section 75 of the Consumer Credit Act 1974 (“s75”) as Mr K had paid S instead of F.

Unhappy, Mr K referred a complaint to this service and reiterated his complaint.

Our investigator looked into the complaint and said Nationwide hadn’t acted unfairly. He said Nationwide correctly processed the claim through the chargeback scheme and there wasn’t a valid claim under s75.

Mr K disagreed. He said he had followed S’s instructions and contacted F when he complained. He said Nationwide had told him to contact S, who continually instructed him to contact F. He said he wanted to be compensated for being a victim and following S’s terms

and conditions. He said he was unhappy with Nationwide's complaint handling and he wanted an investigation into why Nationwide can decide whether to look at a complaint under chargeback or s75. Mr K said Nationwide should be sanctioned.

Our investigator said there was insufficient evidence to show that Mr K would have been able to add on more elements to his holiday by booking online. He said he couldn't consider a chargeback for optional extras which S wasn't able to provide, he could only consider whether a chargeback was due for the things he was supposed to receive. He also said Nationwide had the option to raise a claim under the chargeback scheme or s75. He said Nationwide was bound by the terms of the chargeback scheme and because Mr K didn't contact S to attempt to resolve his dispute, Nationwide hadn't acted unfairly when processing the chargeback claim. He also said he thought Mr K got the holiday he paid for and that it was as described. He said we couldn't consider Mr K's point about the way the complaint was handled by Nationwide as it wasn't a regulated activity.

Following this, our investigator revisited the complaint. He said he was satisfied that Mr K's complaint met the requirements of a valid claim under s75. However, he said he didn't think S had breached the contract and neither did he think it had misrepresented it. He said in relation to Mr K's claim about booking a professional photo experience, there wasn't anything to suggest Mr K would be able to access the photos digitally and in any event, Nationwide had already provided Mr K with a full refund for the photo experience. He also said there was no evidence to suggest that Mr K was asked to complete a consent form before boarding the cruise and although Mr K says he contacted F about this prior to taking the cruise, there was no evidence to show Mr K had provided this in advance of arriving for the cruise. He also said Mr K said he booked the kids club on the cruise prior to boarding but he was told he needed a child identification tag. He said whilst this would have been frustrating, there was no evidence to show this happened. He said the issues didn't cause Mr K a financial loss or hardship, so he didn't think Nationwide should pay Mr K a full refund.

Mr K disagreed. He said Nationwide should have considered his claim under s75 and he provided evidence to Nationwide in line with its terms and conditions. He said he experienced financial, emotional and psychological impact. Mr K also said he intended to purchase the professional photo experience at the same time as booking the cruise, but he was told it could only be purchased on board the cruise. He said S's attempts to manipulate and breach their own contractual obligations by selectively interpreting terms was unjust and fraudulent.

As Mr K remains in disagreement, the case has been passed to me to decide.

### **What I've decided – and why**

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I've read and considered the whole file and acknowledge that Mr K has raised a number of different complaint points. I've concentrated 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. The rules of this service allow me to do this.

To make it clear, this complaint is about Nationwide, as Mr K's credit card account provider. It's not about S or F, who aren't financial services providers and so don't fall within the remit of the Financial Ombudsman Service.

Generally, where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute in two ways – s75 and chargeback.

## *Chargeback*

A card issuer can attempt a chargeback in certain circumstances when a cardholder has a dispute with a merchant – for example where goods never arrived or where goods are faulty and not as described. Before a chargeback can be initiated by a card issuer, like Nationwide, it's generally expected that the cardholder will have attempted to resolve matters with the merchant first.

Chargebacks aren't decided on the merits of the dispute between the cardholder and merchant, but rather they're decided on the relevant card scheme's rules. Chargeback isn't a legal right and there's no guarantee the card provider will be able to recover the money this way. In this case, the guidelines are set by VISA and Nationwide has no power to change them.

In this case, I think the most appropriate chargeback reason code is services not as described. As the funds paid for the professional photo experience were successfully recovered by Nationwide and paid to Mr K largely through chargeback, I've not considered these payments. Instead, I've focused on the cruise holiday.

When Mr K raised a claim to Nationwide, he explained why the cruise wasn't as described. He said that he was asked to fill out a form to show he had authority to take his child out of the country and also he had to fill in a further form to allow his child to attend the kids club on board. S disputed this and said Mr K hadn't contacted it to complain and he'd received the cruise.

Having thought about this carefully, Mr K didn't contact S because its terms and conditions directed Mr K to contact F in the first instance. However, the second part of S's defence was that Mr K had received the cruise. Mr K hasn't disputed that he received the cruise. Instead he was unhappy with the service he received on board. Having reviewed the terms of the chargeback rules and the appropriate reason code, I don't consider that Nationwide acted unfairly when processing the chargeback for the cruise holiday. I think it correctly raised the chargeback and even if Mr K had contacted S, I don't think the chargeback would have had a reasonable prospect of success, given Mr K received the cruise holiday and he doesn't dispute this. There are elements of the cruise that Mr K is unhappy with, that he was unhappy with the service on board, but these elements do not fit a scenario which is covered by the chargeback scheme.

Overall, I've reviewed the actions of Nationwide when it raised the chargeback and the representment documents sent to Nationwide by S. Having done so, I'm satisfied the chargeback was raised correctly by Nationwide and I think it acted reasonably. So I don't think it needs to do anything further here.

## *S75*

I've also considered whether I think it was fair and reasonable for Nationwide to decline Mr K's s75 claim.

Under s75, Nationwide is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is S or F in this case.

In order for there to be a valid claim under s75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Mr K made the purchase on his credit card which was supplied by Nationwide. I can see the invoice from S is in Mr K's name. Nationwide have shown the credit card transaction was in Mr K's name to S.

Nationwide disputes that a valid DCS agreement exists. However, I disagree. The Package Travel and Linked Travel Arrangements Regulations 2018 ("the regulations"), confirm that where a package holiday is purchased covering a period of more than 24 hours, including two elements such as transport and accommodation, then the booking agent has the same responsibility as the supplier of the package. This would mean that S had the same liability

for the performance of the contract as F did. In light of this, I'm satisfied a valid DCS agreement exists here.

I've also considered the financial limits that apply to a valid s75 claim. Mr K needed to have purchased a single item with a cash price of over £100, but no more than £30,000. I can see from the invoice of the cruise holiday that the amount is within the financial limits. So, it follows that I'm satisfied the financial limits have been met for a valid claim.

Overall, I'm satisfied Mr K has a like claim against Nationwide, as he does against S. And that S were acting as an agent of Nationwide.

Having said this, the amount Mr K paid for the professional photo experience is less than £100 and so, it doesn't meet the monetary limit for a valid claim under s75. In any event, I'm pleased Mr K has received a refund for the cost of the professional photo experience through chargeback and Nationwide.

In this case, there's no dispute that Mr K and his family members received the cruise holiday. What I need to decide in this case is whether F asking Mr K to show he had authority to take his child abroad and being asked to fill out another form to allow his child to access the kids club amounts to a breach of contract or misrepresentation. If I think it does, I'll need to consider what, if anything, Nationwide needs to do to put things right.

I've considered all the information supplied as part of this complaint by all parties. Having done so, there is insufficient supporting information to corroborate the events that Mr K has described.

The terms and conditions of F's website say the following:

*"Passengers under 18 years of age... must travel accompanied by their parents or a legal guardian. If one of the traveling minor's parents is not cruising, a signed authorization letter – made in accordance with the laws of the country where the minor resides - from the absent parent authorizing the minor to travel has to be provided at the moment of booking."*

In this case, there is no supporting information to show that Mr K provided an authorisation letter to F at the time he booked the cruise or that he was asked to fill in this document again on board. I can see that S's terms and conditions included a link to F's website. Mr K has said he did contact F, but hasn't provided any supporting information to demonstrate this. Mr K has also detailed what he was told by a port authority official, however this is uncorroborated and therefore the weight I can place on this statement is limited. In light of all this, it's unclear whether Mr K followed F's terms and conditions, so I'm not persuaded there has been a breach of contract or misrepresentation if Mr K was asked to fill out a new form.

Similarly, Mr K has said he registered his child for the kids club on board the cruise ship and he printed a copy of the form. I appreciate that this was likely inconvenient to Mr K as he had to fill out a form on board. However, Mr K hasn't provided a copy of the registration to this service or a confirmation from F that his child had been registered to the kids club prior to him going on the cruise. So, I'm not persuaded there is enough supporting information to show that Mr K did follow F's instructions or to demonstrate that a breach of contract or misrepresentation occurred.

Overall, having carefully considered all this, I don't think it's likely that S or F breached its contract or made any misrepresentations to Mr K about the cruise holiday. And so, I don't think Nationwide unfairly declined Mr K's claim under s75. If Mr K has new evidence he'd like to provide to support his claim, he should direct this to Nationwide in the first instance.

*Did Nationwide act unfairly or unreasonably in any other way?*

Mr K has detailed his unhappiness at the way Nationwide handled his complaint. However, as our investigator has explained, complaint handling isn't a regulated activity and so, I'm unable to consider this part of Mr K's complaint.

**My final decision**

I do not uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 April 2025.

Sonia Ahmed  
**Ombudsman**