

The complaint

Ms N complains about how Nationwide Building Society handled a chargeback claim.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Ms N approached Nationwide for a refund of £798.85 spent on her Nationwide debit card with a travel agency ('the supplier') for a flight which she says was cancelled due to the global pandemic.

However, Ms N is unhappy how Nationwide handled a chargeback dispute she raised with it. She says that it refunded her the money then took the money back without any notice. This put her account into overdraft and caused her financial difficulties, stress and impacted her credit score negatively. She says she shouldn't have to repay the money for the dispute as she didn't receive the service she paid for.

Our investigator upheld the complaint but Nationwide disagreed. In summary, it says:

- It raised a chargeback and it acted fairly in discontinuing it when the supplier defended it because Ms N didn't challenge this.
- Ms N withdrew the initial chargeback credit made to her in August 2020 – and then the remaining credit on her account before the final reversal of the credit in December 2020 – meaning her account was overdrawn (with the balance eventually being written off by Nationwide).

I issued a provisional decision on this case which said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

I am sorry to hear about the experience that Ms N had with the flight booking. It is important to note here that Nationwide is not the supplier of travel services, so when deciding what is fair and reasonable I am looking at what it could reasonably have done for Ms N based on the information reasonably available to it at the time. As Ms N paid for the service in dispute on her debit card I consider chargeback is a relevant way that Nationwide could have assisted her with getting funds back. So it is this I have focused on here.

Chargeback

Chargeback is based on the relevant card scheme rules. In this case I understand the card is a Visa debit card – so I have kept in mind the Visa chargeback rules when deciding what is fair.

A chargeback is not guaranteed to succeed and a bank does not have to raise one. However, it would be considered good practice to both raise and continue a chargeback where there is a reasonable prospect of success.

Ms N brought a dispute to Nationwide which was fairly straightforward – she said that the flight she had paid for was cancelled due to the COVID-19 pandemic and she wanted her money back.

Nationwide raised a chargeback but then it discontinued it. It appears to be saying that it did this because the supplier defended the chargeback, and because it didn't hear back from Ms N to continue the dispute.

I think it is arguable that Nationwide could have reasonably continued the dispute based on the information it already knew to date, noting, in particular:

- *Ms N's flight was due to depart at the height of the pandemic – meaning her claim that it had been cancelled was more likely to have been accurate;*
- *Ms N's claims were supported by evidence she had provided of emails from the supplier showing notifications of schedule changes – indicating that the original flights had been cancelled (and therefore she didn't get the service booked);*
- *the supplier's defence was unclear and contained untranslated foreign documents – however, it did indicate that while Ms N had received the initial booking service from it she was also due a refund from the airline (it provided a system note to show that her booking was earmarked for a refund too); and*
- *even if the supplier was attempting to make the argument that as an agent it had provided its booking role it was still the merchant of record here responsible for the supply of the service (and noting that it provided Ms N with cancellation protection too in any event).*

So I think regardless of whether Nationwide heard back from Ms N in response to its letter about the chargeback decline (which it says it sent her in October 2020) it could have reasonably re-presented it in a pro-active manner. However, even if I were to accept Nationwide's argument that it should have waited for Ms N to get back in touch I think Nationwide's actions have still unfairly deprived Ms N of the opportunity to have the chargeback progressed. I say this because:

- *Ms N said she didn't get the letter Nationwide sent her – and considering the impact on postal services at the time due to the pandemic – this seems that it could be the case and something which Nationwide arguably could have reasonably anticipated.*
- *Even if Ms N had got the letter Nationwide:*
 - *does not clearly explain in the letter why the chargeback was declined (it simply says the 'merchant's bank has let us know the payments are valid') so I don't see how she could have easily come back with a counter argument;*
 - *and*
 - *does not invite Ms N to provide further information in any event – in fact it actively tells her to go elsewhere as follows - 'if you'd like to take your dispute further, you can still get in touch with the merchant directly'.*

So, even if I were to accept Nationwide was unable to pro-actively continue the dispute without further input from Ms N (which I don't) I don't consider it fair that Nationwide can rely on its decline letter from October 2020 to justify discontinuing the chargeback in any event.

Had the chargeback continued I think it is fairly clear that Ms N was entitled to a refund for the service which appears to have been cancelled due to the pandemic. I have not seen any persuasive evidence to date that she received this either from the airline or the supplier – so it follows that had the matter gone further (and potentially to arbitration) it is more likely than not to have succeeded.

So my starting point here is that Ms N is entitled to the £798.85 refund. For completeness, I note the chargeback was made for the full amount of the booking which also included a small fee for cancellation protection/priority service from the supplier. While the chargeback is focused on the flight cancellation I note the lack of evidence showing Ms N got the benefit of the add on services from the supplier in any event. So overall, I consider it fair to conclude that her refund through chargeback (had it been progressed) would likely have been for the full £798.85 here.

Customer service and redress

Part of Ms N's complaint is that Nationwide did not warn her that it would be taking back the initial credit it made to her account in August 2020 (around the time she raised the chargeback).

Nationwide points to the decline letter it says that it sent Ms N in October 2020. Ms N says she didn't get that letter – and considering the situation at the time with postal services impacted by the pandemic I am willing to accept this is a possibility. Whether, Nationwide could have anticipated this at the time and communicated by other means is debatable. However, putting this aside, I think that ultimately the impact of the credit reversal has been compounded by Nationwide's failure to make the nature of the credit clear in the first instance.

To explain further, Ms N has provided credible testimony that no one from Nationwide made it clear to her at the outset that the credit she received was a temporary one and could be taken back. To all intents and purposes she says she thought it was her money to spend as she wanted. Nationwide has not provided any correspondence or call data showing it clearly informed Ms N about this important point. It says she went in branch to raise the chargeback and would have been told about the temporary nature of the credit there – but it hasn't produced any record of due diligence carried out by the branch when it spoke to Ms N about raising the chargeback for her. Including anything to show it clearly explained to her that any credit was not hers to keep and might be taken back in the future.

Nationwide points to Ms N withdrawing the credit soon after it was credited to her current account. It seems to be implying that by doing this and not depositing it back when the reversal happened Ms N compounded the current account difficulties. And while I accept that in certain circumstances a consumer would be expected to mitigate and plan for the possibility of a reversal – here Ms N appears to have been genuinely under the impression the money was hers and says she acted accordingly by spending it. So I am not persuaded that she was acting unfairly in withdrawing the initial credit and treating it as her own – or that she then had the means to put the credit back in the current account when Nationwide carried out the initial reversal in November 2020. I also think Ms N was understandably surprised and distressed when the reversal happened as she had not budgeted for it and was worried about being left short for future expenses.

I note Nationwide temporarily put the money back in the current account when Ms N complained about the lack of warning for the first reversal. However, because the starting point here is that Ms N had treated the original credit as her own – she was still then in a difficult financial position when Nationwide carried out its second reversal in December 2020. So I don't think that Nationwide's delay of the final reversal was effectively able to mitigate the impact of the situation on Ms N.

I know Ms N withdrew funds from the current account once they were re-credited after the November reversal– but it appears this was benefit money she needed to live on and she was understandably worried these funds would be taken back again by the upcoming second reversal. In the particular circumstances I don't think Ms N was acting unreasonably. It is also worth noting that if Nationwide had continued the chargeback as it should have, then Ms N would not have been put in this position in the first place.

Essentially I think the account going overdrawn (and subsequently staying overdrawn) was largely down to Nationwide's actions in not only failing to continue the chargeback for Ms N, but also the manner in which it failed to clearly explain the true nature of the initial credit – which led to Ms N being put in a difficult financial position that she had trouble mitigating in any case.

I have already concluded that had Nationwide handled the claim better Ms N would likely have succeeded in the chargeback for a service not received. I note she already took the August 2020 £798.85 credit and spent it, but I note this benefit was offset by Nationwide's later reversal in December 2020 which left the current account overdrawn and also appeared to eat into some of Ms N's own funds in said account.

To put the situation right I think it fair that Nationwide re-work the current account as if it had not reversed the original £798.85 chargeback credit in November 2020 or any-time after that. Any credit balance in the account left after this should be repaid to Ms N with out of pocket interest.

Ms N says that the situation with the current account has impacted her credit file and applications she made going forward. I have taken a look and can see there is an impact on her credit file– and I can't see any other adverse data about Ms N's accounts apart from this. So, while I have not seen persuasive evidence this data is directly responsible for the specific losses she is claiming, I do see how this information going on her file would have had a particularly stressful impact on her. It goes without saying this information needs removing by Nationwide as part of my direction as I think it would have likely been avoided had it not taken the chargeback money back (from 17 November 2020) after the first credit in August 2020.

I can also see the overall situation with the unexpected debit and the concern about financial difficulties has impacted Ms N. I think Nationwide's actions have caused her more than the level of frustration and annoyance she might reasonably have expected in day to day life and resulted in an impact that has lasted more than a few days causing distress, disappointment and loss of expectation. Therefore, I think the additional award of £300 recommended by our investigator is fair here.

For completeness, I note that Nationwide ended up closing Ms N's current account due to it being inactive. It appears the chargeback experience might have played a role in Ms N deciding to no longer use the account. But it appears she no longer wishes to make use of the account now in any event so I won't be commenting on this aspect further.

My provisional decision

I uphold this complaint and direct Nationwide Building Society to:

- *Re-work the current account as if it had not debited the £798.85 on 17 November 2020 or any time after this and if said re-working results in a credit balance it should repay this to Ms N with 8% simple yearly interest calculated from the date of credit balance to the date of settlement;*
- *remove any adverse information from her credit file in respect of this account from 17 November 2020 onwards; and*
- *pay Ms N £300 compensation for distress and inconvenience.*

If Nationwide deducts tax from the interest element of my award it should provide Ms N with a certificate of tax deduction.

I asked the parties for their comments:

Ms N says that due to the time Nationwide has taken to deal with the issue the compensation should be more than £300.

Nationwide says

- It followed the correct process in relation to chargeback;
- it credited the funds temporarily to Ms N when she explained she hadn't received its letter confirming the transaction was valid;
- while its letter didn't invite Ms N to provide further information there was nothing preventing her doing so when she became aware the merchant had declined the dispute;
- Ms N didn't dispute the outcome following the temporary re-crediting of the transaction and Nationwide would not have been aware of what the situation was with the merchant so could not pursue the matter on Ms N's behalf without further request from her to do so; and
- how could it reasonably have known/ought to have known to have pursued a chargeback and that Ms N hadn't accepted the outcome?

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.

Neither party has given me cause to change my provisional findings – which I still consider fair for the reasons already given (above). These findings now form my final decision alongside the points below:

I have thought carefully about what Nationwide has said in its response to my provisional findings. However, I don't agree that Ms N is at fault for it not continuing the chargeback or that Nationwide could not reasonably have known she was still unhappy and wanted it to take things further. I will explain why.

As I have already indicated in my provisional findings, I think that Nationwide had enough information to have pro-actively pursued the chargeback without further input from Ms N. However, even if this were not the case I am not persuaded that Nationwide's communication was clear enough about the possibilities of taking things further in any event.

There is a dispute over whether Ms N received Nationwide's October 2020 letter about the chargeback outcome. However, that aside, I think the communication in that letter is a good indication of Nationwide's stance at the time on the chargeback going forward – and what it likely would have relayed to Ms N during subsequent interactions. That stance would appear to be as stated in the letter as follows - *'if you'd like to take your dispute further, you can still get in touch with the merchant directly'*.

Nationwide has not persuaded me that it was clear with Ms N that it could have taken things further for her. And in fact it appears the approach was likely the opposite of that. So I think it unfair that it expected more of Ms N here. On balance, I don't think Nationwide ever made it a clear option for Ms N.

I also note that Ms N contacted Nationwide unhappy that the initial credit had been re-debited. This is what prompted it to re-credit her. From this alone I think it would have been reasonably clear to Nationwide that Ms N still felt she was entitled to the money, was unhappy with the outcome, and that she had not had any refund back from the supplier to date. I don't believe she would have indicated she was happy with the situation here. And from this Nationwide ought reasonably to have known that continuing the dispute was something Ms N would want to do– but I don't see where it offered to do so.

Overall, I think Nationwide could have done more here. It has not persuaded me that Ms N has acted in such a way as to fully mitigate its actions in not taking the chargeback further. Or that its customer service and overall approach here does not warrant compensation.

I have thought about what Ms N has said about the level of compensation due. I know her complaint has taken a while to resolve since she raised it with Nationwide around June 2023. And that this matter has affected her for a while. It would have been stressful being asked to pay the debt on the current account. However, I note that Ms N had the benefit of the reimbursed funds to use from an earlier stage – which would have mitigated the situation somewhat. Overall, for the reasons already given I am satisfied that £300 is a fair amount of compensation.

Putting things right

For the reasons already given I direct Nationwide to put things right as directed below.

My final decision

I uphold this complaint and direct Nationwide Building Society to:

- Re-work the current account as if it had not debited the £798.85 on 17 November 2020 or any time after this and if said re-working results in a credit balance it should repay this to Ms N with 8% simple yearly interest calculated from the date of credit balance to the date of settlement;
- remove any adverse information from her credit file in respect of this account from 17 November 2020 onwards; and
- pay Ms N £300 compensation for distress and inconvenience.

If Nationwide deducts tax from the interest element of my award it should provide Ms N with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms N to accept or reject my decision before 29 July 2024.

Mark Lancod
Ombudsman