

The complaint

Mr L complains about a claim he made to Nationwide Building Society in respect of a booking he made using his credit card.

What happened

Mr L booked flights in May 2021 for a friend through a travel agent ('the agent') using his credit card for flights with a particular airline ('the airline'). The flights were due to depart in July 2021.

Mr L says that due to the Covid-19 pandemic the original booking dates were not suitable, so he contacted the agent about flying another time. He said they promised to issue him with a travel voucher instead. However, he has not received the travel voucher, or a refund and the agent is no longer trading.

Mr L made a claim to Nationwide around April 2022 to see what they could do to help. It said it was unable to raise a chargeback as it was out of time to do so. It also looked at Section 75 of the Consumer Credit Act 1974 ('Section 75') but it said that Mr L did not have a valid claim because of the way the booking was made. It also noted there was no breach of contract by the agent.

Mr L was not happy with this outcome and complained. Our investigator looked at the complaint which Mr L made to Nationwide and did not uphold it. She concluded that Nationwide had handled the claim sufficiently and noted:

- the relevant time limit for a chargeback had expired when Mr L got in touch with Nationwide – so it couldn't pursue that route for him; and
- he didn't have a valid Section 75 claim because it appeared that Mr L's friend was the contracting party.

The matter has come to me to consider for a decision.

I issued an initial provisional decision on this matter. In this I said, in summary:

- Nationwide is not the supplier of travel services here and I am considering how it handled the claim in the context of its role as a provider of financial services only. In this respect I consider its specific responsibilities in light of the card protections of chargeback and Section 75 to be relevant here.
- The chargeback scheme is one way Nationwide might have been able to help Mr L recover money spent on his card. However, it is not a guaranteed method, there are specific rules around the chargeback scheme which govern its use.

- I am not persuaded Nationwide should have done more in respect of chargeback because it appeared the chargeback was out of time and even if it were raised in time, because the flights were booked and available it is unlikely to have succeeded.
- Even though Mr L has suggested he got a fake e-ticket originally that isn't clear so it is difficult to say this should have been approached by Nationwide as a claim about counterfeiting.
- In this case a key consideration is whether there is the correct 'debtor-creditor-supplier' agreement for a valid Section 75 claim. Essentially the issue is whether Mr L has the relevant agreement with the supplier in order to hold Nationwide responsible for a breach of contract or misrepresentation by said supplier.
- I think it is reasonably clear Mr L does not have a claim in respect of the actions of the airline here. He didn't pay it using his credit card nor does he have any apparent contract with it for flights. Any contract with the airline for carriage in that respect would appear to be with his friend due to fly (and named on the reservation as the passenger).
- Mr L has made the point that he had an agreement with the agent. And I think that is a valid point that warrants a closer look here. Even though Mr L was not going on the flights – this doesn't necessarily prevent him from having a contractual agreement with the agent in respect of certain booking services it provides. However, the contractual situation is not entirely clear and some of the booking confirmation screen grabs do not show all the information I need to see (*I specifically invited Mr L to provide further information on this point*).
- Even if I did accept Mr L was contracting with the agent for the original booking I don't think there are clear grounds to say Nationwide should have upheld a Section 75 claim in any event as there was not a clear breach of contract or misrepresentation by the agent here. The reservation appeared to have been made by the agent and the agent did not contractually guarantee an amendment was possible nor did it appear to be refundable. It appears that ultimately this was a request to cancel with the acceptance of a voucher to use for future travel (as a goodwill gesture). Not being able to use the voucher here is not a breach of contract.

I did not propose to uphold the complaint and I asked the parties for their responses:

Nationwide said it had nothing further to add.

Mr L responded to (in summary):

- clarify it was he who contracted with the agent and provide additional evidence in support of this;
- explain his claim is not about counterfeit tickets but a company failing to go about their processes 'efficiently' and 'effectively' and acting without 'due care';
- provide further evidence to show the booking reference the airline referred to in its email about the passing of funds/issuing of an e-ticket does relate to his booking;
- state the agent did not offer him a goodwill gesture as there is a possibility to change to alternative dates (depending on the airline) and a specific process of form filling for this (which he completed);
- point out that an email from the agent sent to him shortly before it went out of business confirms although the airline is not providing refunds they could offer a change to different flight dates;
- highlight the advice by the Civil Aviation Authority 'CAA' and the agent's own website which states that if a credit card was used then the cost could be covered by Section 75; and
- point out that the organisation dealing with the receivership of the agent advised him to seek redress through his credit card company.

I responded to Mr L to clarify the reasoning in the provisional decision, my understanding of the timeline and request any further comments. The investigator also provided Mr L with information that indicates the flight that was booked departed as scheduled in July 2021.

Mr L responded in summary to say:

- he has lost £786 to the agent which had no intention of getting replacement flights arranged when it knew it was going into liquidation;
- he sent the agent many emails and phoned it, but no one would confirm anything about bookings or refunds, and it was very frustrating and stressful;
- he is a long-standing customer of Nationwide and does not consider it did enough for him; and
- he would like to draw my attention to webpages which he considers relevant to his case and support his claim against Nationwide for not reimbursing him for the full cost of the flight tickets (such as those from the CAA).

I then issued another provisional decision, the findings of 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 have considered the submissions by the parties I might not comment on everything, only what I consider to be central to this case. This isn't intended as a discourtesy but to reflect my role resolving disputes informally.

Mr L has provided additional information in response to my provisional decision. The investigator can provide any specific information that Nationwide wishes to see in respect of what Mr L has sent us (and my follow up response to him) – but in any event I will ask the investigator to send Nationwide the more comprehensive booking confirmation document Mr L has provided as that is a central piece of additional information here.

Here I am issuing a further provisional decision as I have reflected on the submissions Mr L has provided and now consider it fair and reasonable to change my originally proposed outcome and uphold this complaint.

The contract with the travel agent

Mr L has provided further information to show that his email address was used to make the booking with the agent and that it was he who it sent the booking confirmation. Mr L has also clarified the circumstances of the booking and how his friend did not have contact with the agent in regard to booking – he explains that this would have caused difficulty as she cannot write or speak English well.

Mr L has provided credible and persuasive testimony which is backed up by the documentary information he has provided. Overall, while I accept that he was not the passenger booked on the flight I am now satisfied that on balance Mr L did have an agreement with the agent for the booking arrangements and services rendered by it– therefore he does have a Section 75 claim against Nationwide for any breach of contract of misrepresentation by it in respect of said booking.

The protection offered by Mr L's credit card

Mr L has raised several online articles that point to protection offered by a credit card and indicated that he was advised to seek redress through Nationwide. However, even though paying for things on credit card can give protection through Section 75 or Chargeback this isn't guaranteed to succeed and depends on the nature of each individual claim. So I don't think these articles mean that Nationwide should have upheld the claim.

Furthermore, while Mr L had indicated he has been treated differently to others who made similar claims, I look at each complaint on the individual and particular circumstances presented to me.

The Section 75 claim

As I have indicated in my provisional decision – a Section 75 claim concerns either a breach of contract or misrepresentation by the supplier of the service Mr L paid for using his card (in this case the travel agent arranging the booking).

The allegation here concerns a breach of contract. So the question is whether the agent breached a contractual obligation it had to Mr L.

I have thought about Mr L's submissions in response to my provisional decision and it has caused me to carefully reassess this case. I consider Mr L's more recent response and the evidence he submitted has persuasively highlighted the following:

- that (despite using the term later on) he didn't in the first instance contact the agent to cancel the booking and initially made an application for a date change - something that later evidence shows the airline was able to accommodate;*
- the airline was referring to Mr L's booking when it confirmed the agent had never passed on the money for it;*
- that Mr L is not accusing the agent of producing a counterfeit ticket but in fact claiming that it did not act with 'due care' in respect of the service it provided.*

Mr L has mentioned 'due care' in his response. I note that the Consumer Rights Act 2015 implies a term into all consumer contracts that a service will be provided with reasonable 'care and skill'. What Mr L has recently highlighted along with the new information he has provided has led me to question whether in fact the agent did act with reasonable care and skill in carrying out its role.

While there is no specific definition of reasonable care and skill, I consider it fair to assess this based on the reasonable expectations in that particular industry. It does not seem unreasonable to expect that the agent Mr L paid in its role arranging travel would take reasonable steps to make the booking arrangements, pass funds to the principal and facilitate any post booking requests/administration issues. In this case, for reasons I go on to explain I am not persuaded that the agent did act with reasonable care and skill. Furthermore, I consider its failure to do so is likely to have caused Mr L to lose out here.

Although I accept Mr L eventually took a travel voucher from the agent he has underlined that his original intention and request was in fact for an amendment to the booked travel dates. I can see Mr L has drawn my attention to an email confirming he followed the process to apply to the agent for a date change request.

In my provisional decision I pointed out the agent in its terms does not guarantee it can make amendments to bookings. However, I note it does say that it will 'endeavour to assist' with this. And Mr L has highlighted a later email from the agent on 23 July 2022 which confirms that while the airline is not issuing cash refunds it will allow a change of flight dates. This now leads me to question whether the agent did in fact take reasonable steps to request an amendment with the airline back in July 2021 when Mr L first requested it. There is no persuasive evidence that it did.

With this in mind it is arguable that the agent was potentially breaching its own contractual agreement to 'endeavour to assist'. However, in any event and considering its role as agent it would appear that not contacting the airline to facilitate a rebooking request here would be a failure to act with reasonable care and skill considering the expectations around its role. Whether I am considering the specific or implied term of the contract Mr L had with the agent there would appear to be a breach here which has caused Mr L to lose out because had the new dates been re-booked he would not have had to accept the agent issued voucher that he ended up not being able to use.

I also note that when Mr L made enquiries with the airline at a later stage (when he was having trouble using his voucher to re-book with the agent) he received an email from it dated 13 May 2022 stating that it had never received the money in respect of a particular booking reference despite a reservation being made. It has now become clear this was in fact Mr L's booking reference. On reflection I still think because the original reservation was made there is not a breach of contract simply because the agent might not have passed the money over to the airline immediately (and might have had arrangements to pay at a later stage closer to the time of departure) – however, I now question why it reasonably held on to Mr L's money for about a year in light of the particular circumstances here.

It appears there would be a reasonable expectation that at some point (even if not straight away) the agent would pass on the required funds to the airline to facilitate the booking or any permitted changes through said airline. Particularly where there is nothing in the agent's contract that explains that the agent has a right to hold onto funds indefinitely and where the contract indicates that it is the airline that controls the funds (as it levies any applicable fees for cancellation etc). It is worth noting here that in the circumstances where the airline was

apparently willing to permit date changes there is further cause to question why the agent did not pass the funds over.

By failing to reasonably pass over the funds for Mr L and apparently only offering to issue him with its own voucher (outside of the contract) he has been caused detriment. Had it passed the funds on I am persuaded Mr L would have likely been able to re-book with said airline even after the agent had ceased trading – that is indicated by the email the airline later sent to Mr L directing him back to the agent to sort things out (it appears it could not offer a rebooking as it never got the payment).

In summary, while it is not disputed that the original flight took place (and Mr L did eventually accept a travel voucher issued by the agent) I consider there is an overall breach of contract here as in the response to Mr L's original request to amend the booking. Furthermore, and in any event I also don't think the agent acted with reasonable skill and care in failing to pass Mr L's funds over to the airline in the particular circumstances here.

Because I think the agent breached its contract with Mr L I consider that with Section 75 in mind Nationwide is responsible for providing Mr L with a fair remedy.

I think it is now difficult to provide Mr L a remedy of specific performance because of the time that has passed. So here I think a refund is appropriate for the full amount Mr L paid for the booking. However, because some key information has come to light at a later stage I don't think it would be fair to add interest to this refund.

My provisional decision

I direct Nationwide Building Society to pay Mr L the cost of the flights he paid for being £786.

I asked the parties for their comments. Both agreed with my 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.

As both parties agreed with my outcome I have no cause to alter my latest provisional findings as copied above. I still consider these to be fair and reasonable.

Putting things right

Refund the cost of the flights to Mr L for the reasons outlined in my latest provisional decision.

My final decision

I direct Nationwide Building Society to refund Mr L the cost of the flights he paid for being £786.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 August 2023.

Mark Lancod
Ombudsman