

The complaint

Mr A complains about how Nationwide Building Society dealt with his chargeback dispute in relation to the deposit he paid for a holiday.

What happened

In June 2022 Mr A booked a river cruise and paid a deposit of £350 with his Nationwide debit card. The merchant, which I will call "A1", ceased trading in September 2022 and went into administration. Its assets were sold to another company, which I will call "L". L took over responsibility for all of the holidays which had been booked with A1. L asked Mr A to pay it the full price, including the deposit, and told him to recover the deposit from either Nationwide (by way of chargeback) or from an insurance company which I will call "E" – there is a dispute about which of them Mr A was supposed to ask for his refund, E or Nationwide.

In November 2022, Mr A asked Nationwide to raise a chargeback dispute about the deposit. Nationwide did this, but the chargeback was unsuccessful. Mr A complained to Nationwide about the outcome. In its final response letter, Nationwide told Mr A that the chargeback had been defended by L (on behalf of A1) on the basis that Mr A had received the holiday he had paid the deposit for. Nationwide told him to take up the matter with trading standards or with ATOL.

Mr A then brought this complaint to our service. Nationwide provided us with the merchant's response to the chargeback, which consisted of a letter to yet another company, which I will call "P", from P's solicitors, explaining that no chargeback disputes should be raised against P because all P does is provide its customers with an electronic money account which they can then use to pay money to merchants such as A1. This meant that chargeback was therefore the wrong remedy, since such payments are not covered by the chargeback scheme. That letter went on to say that all claims for refunds of payments made to A1 should be made either to ATOL or to E, depending on whether the booking had included a flight or not. Refunds of bookings involving a flight should be claimed from ATOL, and refunds of bookings not involving a flight should be claimed from E.

One of our investigators considered this complaint, and she upheld it. She found that L had told Mr A to ask Nationwide for the refund of his deposit. She said Nationwide should not have told Mr A to approach ATOL, because Mr A's booking did not include a flight and so ATOL could not have assisted him. She also said that L had claimed that Nationwide had raised the chargeback against the wrong merchant – a company which I will call "A2", which has a very similar name to A1. For all of those reasons, the investigator thought that Nationwide should have pursued the chargeback to the arbitration stage, and that this would probably have been successful. She recommended that Nationwide pay Mr A £350, plus another £100 for his inconvenience.

Nationwide did not accept that opinion. It said it had raised the chargeback with the correct merchant, and that it would have been impossible for it to do otherwise under the chargeback scheme. It maintained that the merchant had defended the chargeback by saying that Mr A had to apply to E for his refund, not to Nationwide. It asked for an

ombudsman's decision.

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.

Having done so, I uphold it. I will explain why.

I am satisfied that the chargeback was raised against the correct merchant, for two reasons. Firstly, because I accept Nationwide's statement that it would have been impossible for it to have raised a chargeback against anyone other than the party to whom Mr A's debit card payment was made, because of how chargeback works. And secondly, because L's confusion about who the payment was made to has only arisen because A1 had been trading under a different (but very similar) name, and coincidentally that other name is exactly the same as the name of an entirely different company, A2 (which is still trading). Indeed, L's own website repeatedly refers to A1 by its trading name of A2. However, I have looked up both companies on Companies House and compared their company numbers with the one referred to on L's website, and the one L calls A2 is really A1. There is no evidence to show that the chargeback was really raised with the real A2 rather than against A1.

I am also satisfied that Mr A made his payment to A1, and not to P, and that the chargeback was raised against A1 and not against P. I've read the letter which P's solicitors wrote on P's behalf, and which was submitted by L as part of the defence to the chargeback. The letter is not bespoke to Mr A's case, but is a generic or template letter which states that it is intended to serve as a defence to a large number of actual or anticipated chargeback disputes (and also as a defence to claims brought under section 75 of the Consumer Credit Act 1974, which doesn't apply to debit card payments).

That letter contains the following paragraph:¹

"The merchant account for the Visa and Mastercard transaction(s) is held and operated in the name of [P] Limited which the customer's transaction(s) were made on furthermore the customers receipt and billing descriptor clearly shows "[P]" on the original transactions."

However, the screenshots supplied by Nationwide clearly show that Mr A's debit card payment was made not to P but to A1, and the chargeback was raised against A1. Therefore P's defence that it is only an electronic money wallet provider is not relevant to Mr A's chargeback dispute. I have seen no evidence to suggest that Mr A's payment was anything other than a straightforward debit card payment made directly to A1 without going through any intermediary. I am therefore satisfied that the chargeback dispute was properly raised by Nationwide – that is to say, that chargeback was indeed the correct remedy, and the chargeback dispute was raised with the correct party.

That is not to say that the letter is entirely irrelevant in this case, however, because L still relied on it in its defence to the chargeback claim. Indeed, that document seems to have been L's entire defence.

The letter says that refunds should be claimed from E, if there was no flight included in the booking (and from ATOL if there was one). It provided a link to E's website.

¹ I have redacted P's name from the quote, but I have left the spelling and punctuation uncorrected.

Mr A's booking was not for a flight, but for a river cruise, so Nationwide's advice to Mr A in its final response letter that he should approach ATOL was an error.

E's website clearly states:

"If you paid by debit card contact your card provider and make a claim under the Debit Card Chargeback Scheme."

It then goes on to say:

*"If you are not able to make a refund claim through any of the above methods then you can submit a claim for consideration under [A2's] Financial Failure Insurance Policy."*²

E was the company responsible for handling claims under the Financial Failure Insurance Policy. So it appears from E's website that cardholders were expected to attempt a chargeback first, and only if that was unsuccessful were they to make a claim to E – not the other way around.

For both of the above reasons, I think that Nationwide was wrong to accept the defence to the chargeback dispute. The merchant was wrong to say that chargeback was never an available remedy, and was also entirely contradicted by the correct procedure for claiming refunds, which was to try chargeback first, and only then to bring an insurance claim with E. So I think that Nationwide should have pursued the chargeback to arbitration, and that this would most likely have succeeded, considering all the evidence which had been supplied.

I agree with the investigator's proposed compensation.

My final decision

So my decision is that I uphold this complaint. I order Nationwide Building Society to pay Mr A £350, plus another £100 for his inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 January 2024.

Richard Wood
Ombudsman

² Here, A2 means A1, as I explained above.