

The complaint

Mr C complains that Nationwide Building Society won't refund a payment he made using his credit card.

What happened

In February 2023, Mr C paid for a one night stay at a hotel. He paid £734.93 for the stay using his Nationwide credit card. In March 2023, Mr C approached Nationwide for help in obtaining a refund. He says that during his stay building work was taking place which the hotel had not warned him about. Due to the level of noise, he asked to be moved rooms and he says the room he was moved to was of a lesser standard.

Nationwide said it couldn't obtain a refund through the chargeback process operated by the card scheme and it didn't consider Mr C could claim for a breach of contract or misrepresentation through section 75 of the Consumer Credit Act 1974 ("section 75") either. However, as a gesture of goodwill it offered Mr C a refund of £73.49 representing 10% of the amount he paid. It also agreed to pay him £50 compensation for the poor service it had provided him while reviewing his claim.

Our investigator didn't recommend the complaint be upheld. She didn't think Nationwide had done as much as it could have to appropriately review Mr C's request for a refund. She thought it could have tried to obtain more information and evidence from Mr C before reaching an outcome. However, she didn't think this failure by Nationwide had caused Mr C any loss.

This was because as part of her investigation she asked Mr C to provide the information she thought Nationwide ought to have obtained from Mr C, but Mr C couldn't provide it. She didn't think Mr C had adequately demonstrated that a refund of more than 10% would be reasonable.

Mr C didn't agree with that outcome. In summary, he said that he missed out on considerably more than 10% of what he paid for. Nationwide had made no attempt to contact the hotel to substantiate his claim. He had supplied pictures and audio of the construction work taking place. He said he could not provide any more information about the room he booked or the room he was moved to, only the hotel held that information and it is for Nationwide to obtain it when substantiating his section 75 claim.

The complaint has been passed to me for a 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.

Mr C paid for the hotel using his Nationwide credit card, so I've thought about whether it acted fairly in trying to assist him with his request for a refund.

The general effect of section 75 is that if Mr C has a claim for breach of contract or misrepresentation against the supplier of goods or services paid for using certain types of credit, he can bring a like claim against the provider of credit. He can only do so if certain conditions are met, and I'm satisfied they are met here.

Mr C says there was a breach of contract by the hotel because his enjoyment of his stay was impaired by the building work taking place. He says he also didn't receive what he paid for because he was then moved into a room of a lesser standard than what he had booked.

Mr C has provided evidence by way of an audio recording and photos of the building work taking place. I'm satisfied from what he's provided that the building work would have had an impact on his enjoyment of the stay. I've also not been presented with anything to demonstrate that Mr C was informed of the building works taking place prior to him booking the room.

However, it doesn't automatically follow that Nationwide therefore has any liability for a breach of contract. This is because Mr C says that the hotel agreed to move him to a different room, away from the construction noise. So, the hotel did potentially remedy any breach of contract. Mr C argues this wasn't a suitable remedy because the room he was moved to was of a lesser standard to what he originally paid. However, Mr C has not provided sufficient evidence to demonstrate that the room he was moved to was of a lesser standard.

Our investigator asked Mr C to show what he originally booked (by providing, for example, the original booking invoice) and something to show that the room he was moved to was not of the same type or the same standard. Mr C has been unable to provide any of this information and says only the hotel would have access to those details. While Mr C feels that Nationwide should have contacted the hotel to obtain this information, it isn't Nationwide's role when assessing a section 75 claim and complaint to make Mr C's claim for him.

In approaching Nationwide, Mr C was making a claim against Nationwide in place of the hotel. Nationwide were effectively in the place of the defendant in the claim – it was not acting for Mr C. It was therefore incumbent on Mr C to demonstrate there had been a breach of contract. He didn't do this, because his own submissions didn't do enough to show he hadn't received what he had paid for. Nationwide didn't therefore need to seek any evidence from the hotel to rebut his claim.

Like the investigator, I think Nationwide ought to have asked Mr C to provide additional evidence before simply declining his claim and complaint. But, as Mr C has told us he doesn't have anything further to provide, I don't think Nationwide's failure to ask him for further evidence has made any material difference.

Nationwide did agree to provide Mr C with a refund of 10% of what he paid. In the circumstances, I think this was fair and reasonable given that Mr C was able to demonstrate that construction work had initially impacted his enjoyment of his stay. However, as he couldn't adequately evidence that the hotels solution of moving rooms didn't satisfactorily remedy that breach of contract, I can't reasonably say that Nationwide ought to have provided a larger refund. For these reasons, I think Nationwide has dealt with Mr C's claim fairly and I don't think it needs to do anything more.

I've also considered that Nationwide could have attempted to get a refund (or partial refund) for Mr C using the chargeback process. Nationwide says this option wasn't available to it for this type of claim. I'm not persuaded that's correct. However, in order for a chargeback to have had any reasonable prospect of success, Mr C would have needed to have provided some evidence of what he was supposed to receive and what he actually received. As he

hasn't been able to do that, I don't think Nationwide's failure to properly consider a chargeback has had any material impact on Mr C obtaining a refund.

Lastly, I note Nationwide also paid Mr C a further £50 for the poor service it provided him when he tried to speak to Nationwide over the phone about his claim and complaint. I consider this to be fair and reasonable compensation for those customer service issues.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 April 2024.

Tero Hiltunen
Ombudsman