

The complaint

Ms K complains that Nationwide Building Society has not met its obligations in regard to transactions she made on her credit card to get out of a Timeshare type agreement.

What happened

In November 2019 Ms K talked with a company which said it provided Timeshare Relinquishment services (which I will call "Firm R"). Ms K says Firm R told her it could liaise on her behalf with other firms who could get her out of her timeshare type agreement she had previously entered into. And that if those other firms could not get her out of her timeshare agreement within twelve months she'd get a refund. So Ms K agreed to pay Firm R £5955 and used her NBS credit card to pay Firm R £1500 in December 2019 as an initial payment. Later in December 2019 Ms K changed her mind and told Firm R she did not want to go ahead. There was then further correspondence and in June 2020 she paid another £3000 to Firm R. In October 2020 a different company confirmed to Ms K that she'd been exited from her timeshare agreement.

In July 2022 Ms K complained to Nationwide Building Society (NBS for short) about these payments and that she knew that a company (Firm F for short) had been paid by Firm R around £750 to get her out of her timeshare. So Ms K wanted the difference between what she paid and what Firm F was paid by Firm R. She also said there were key misrepresentations and breaches of contract. NBS considered the matter and did not uphold her complaint or make any payment to her. So Ms K brought her complaint here.

Our Investigator considered the matter and felt that NBS had not treated Ms K unfairly, largely because Ms K had it confirmed that she was out of the timeshare within the twelve months described and that there wasn't any persuasive evidence that NBS had treated her unfairly. But Ms K did not agree so this decision comes to me to decide.

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.

I should make it very clear that this decision is not about Firm R or Firm F in regard to Ms K's timeshare relinquishment. This is because these companies are not within the jurisdiction of this service. This decision is solely about what NBS did or did not do in relation to its obligations in relation to Ms K. And it should be remembered that NBS is only involved in this issue as a result of its managing Ms K's credit card account which she used to make these transactions to Firm R. It was not the party that offered timeshare relinquishment services to Ms K. I should add that Ms K has provided substantial amounts of evidence and comment in relation to Firm R and indeed apparently linked entities. I have considered all of this. However I will only be considering the actions of NBS here, as this decision can only consider how it considered Ms K's dispute and not some of the broader issues Ms K raises about other parties.

The tests I must consider in relation to NBS are whether the transaction itself was made correctly, whether NBS's position in regard to Chargeback is fair and whether Ms K's Section 75 claim to it under the Consumer Credit Act 1974 was fair. I hope this is clear.

Ms K does not contest that she made the transactions originally, or that they were applied incorrectly to her account. I have considered the transactions themselves and I'm satisfied NBS didn't do anything wrong in processing it or allocating them to her account.

could NBS challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute about a transaction, as Ms K does here, NBS can attempt to go through the chargeback process. Chargeback is a process administered by the card scheme and not NBS and it is the scheme that has the final say on such disputes if taken to the conclusion of the chargeback process. So NBS could take a dispute such as Ms K's through the whole process and Ms K not be refunded through no fault of NBS'. Furthermore chargeback is not a right, but this Service does consider it good practice to raise a chargeback, if within the time limits and there is a reasonable prospect of success. I do not think NBS could've challenged the payments on the basis Ms K didn't properly authorise the transactions, given what I've already set out.

The chargeback rules have time limits including a 540 day 'long stop' rule. Here Ms K's transactions were in December 2019 and June 2020, but she did not take her dispute with Firm R to NBS until July 2022. Which in both instances is some time after the 540 day time limit from the time of transaction to make a viable chargeback. So I do not think NBS has treated Ms K unfairly in regard to chargeback because any chargeback raised when NBS first heard of this dispute couldn't have been successful due to these time limits. So Ms K has not lost out due to NBS under chargeback.

how about the Consumer Credit Act 1974?

Section 75 of the Consumer Credit Act 1974 says in essence that as long as certain qualifying criteria are met then NBS can be held to a 'like claim' as to that which Ms K has against the supplier of the services, here Firm R. I am satisfied that the qualifying criteria are met here which then means NBS has to consider whether Firm R misrepresented the contract to her or whether it breached the contract with her (or both). And, in essence, if Firm R did those things (breach or misrepresentation) whether there is anything to be done by NBS to remedy that.

Here Firm R's role was to introduce and facilitate Ms K's timeshare relinquishment by liaising with third parties who'd be responsible for getting her out of the timeshare within twelve months. It is clear it did that. So it is immediately clear there is no breach of contract on the agreed terms as it did the introduction required. I have seen correspondence from Firm F confirming Ms K was out of the timeshare within the stipulated twelve months, so on the face of it, Ms K got what she wanted from the deal. Or in other words, there was no breach of the contractual terms agreed because Firm R did engage with other parties which is all it was required to do. And it so happens that it appears such a firm did get her out of her timeshare bearing in mind the correspondence from Firm F that I've described.

It is of note that Ms K agreed under contract to pay £5995 but from what I've seen hasn't paid this amount in full. So it seems at least possible Firm R could ask her to pay the remainder which she's contractually bound to pay which is a defence that NBS could use under a like claim.

I've considered the contract she signed and the terms therein. I'm not persuaded she was misrepresented into this contract bearing in mind its terms and that the desired outcome was

apparently reached in time. It is also of note that Ms K's representatives' representations on the matter as to what happened during the sales process by Firm R are very broad, refer to pressured selling when Ms K made payments six months apart, refer to Ms K as 'him' and 'he' on occasion and don't provide any detail as to how these sales techniques manifested. Ms K's representatives' representations fall some way short of being persuasive to my mind.

Ms K later gives this service direct accounts of what happened which are more reliable than that of her representatives. But she doesn't explain what NBS has done wrong here persuasively and indeed makes very little comment about NBS generally. Just because Ms K feels she's lost money doesn't necessarily mean that NBS should pay. It should only have to pay if it has done something wrong which lead to Ms K losing out. And I'm not persuaded it has.

For the sake of completeness I'll deal with some of the key arguments Ms K has made as I see them. She says it seems unfair that she paid Firm R £4500, but it only paid Firm F around £750, and she'd like to be given the difference. NBS has no responsibility for a contract between Firm R and Firm F including any profits Firm R might make under such a contract. Firm R's contract with Ms K is silent on its commercial arrangements with its third parties and certainly doesn't disclose any amounts to be paid to third parties to Ms K. And she agreed to pay Firm R £5995. So I don't see any persuasive reason for NBS to do anything here.

Ms K has asked for further evidence to sought in relation to what happened between Firm R and Firm F and other parties. But S75 is in essence a 'like claim', which means Ms K can make a claim to NBS on the same basis as she would if she was to take legal action against Firm R. So the onus is on her to show her claim and supporting evidence rather than for NBS to search for further information about relationships between other firms in a claim against itself. And in any event for the reasons NBS and the Investigator have given I'm not persuaded knowing more about such relationships would make any difference to the outcome that NBS reached. That is it had treated her fairly in its consideration of Ms K's claim to it for the reasons given.

Ms K says her timeshare provider still want her to pay it fees. If Firm F has provided false information to this service and indeed NBS then Ms K can complain to it. But even if Firm F provided her false information it doesn't make a difference to NBS' position or my decision on this complaint. This is because the contract Ms K had with Firm R solely said it would introduce her to third parties and otherwise administer the process. Firm R wasn't responsible for securing the timeshare relinquishment itself for Ms K but rather to liaise with third parties who could. Which it evidently did.

I should add many timeshare arrangements can be exited by the timeshare owner simply writing to the timeshare provider requesting to exit the timeshare and being up to date with fees. I should add that I have not seen Ms K's contract for timeshare so do not know whether this is the case with her particular timeshare. But if she contacts her timeshare provider directly it should provide her guidance as to what she has to do to get out of such an agreement and whether she is actually in such an agreement. And then she can make an informed decision as to how to move forward.

Ms K says this is a clear case of theft by Firm R. NBS is only responsible here based on it providing credit to Ms K and the legislation quoted. I can only uphold complaints about it if it has done something wrong under its obligations to Ms K as I have described. And I am not persuaded it has for the reasons given. And as I have said Ms K doesn't give persuasive arguments as to what NBS did wrong.

All in all, having considered all of Ms K's arguments I'm not persuaded she's lost out because of how NBS treated her. I appreciate that Ms K feels she has been duped and treated badly by Firm R and lost out because of what it did. But that does not mean NBS has treated her unfairly. And I am satisfied NBS did treat Ms K fairly. So her complaint is unsuccessful.

My final decision

I do not uphold this complaint against Nationwide Building Society. It has nothing further to do on this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 23 February 2024.

Rod Glyn-Thomas
Ombudsman