DRN-5002129

The complaint

Mrs W complains that Nationwide Building Society treated her unfairly regarding a dispute about a transaction funding a property rental.

What happened

In August 2022 Mrs W was interested in a property rental in the United States of America which was advertised as having a heated swimming pool on an introducer website (the website). She reached out to the property owner through the website and was given written assurances as to the pool temperature. So she paid £6579.71 using her NBS credit card to book the property for the end of March to Mid-April 2023 for four adults (including Mrs W) and a child.

On arrival she found the pool to be too cold. So she liaised with the property owner and adjustments were made to the heating but Mrs W says that throughout the stay the pool never got above 72 Fahrenheit whereas the property owner in her written assurances pointed to the pool being "100-105F". Mrs W says that the pool was too cold to use and that they would not have booked the property had they known the pool would have been at 72F at most during their stay. Mrs W accepts her party stayed at the property for the full duration of their booked stay.

Mrs W complained to the property owner and she offered her $200 which she refused as it was substantially below what she thought was a fair resolution to the matter. So she took her complaint to NBS.

NBS considered the matter. In short its overall stance is that a chargeback couldn't have been successful because there was no appropriate reason code for it to be successful and that Mrs W and her party had stayed for the full period of the booking. It also felt that a claim under S75 of the Consumer Credit Act 1974 ("S75" and the "CCA" respectively for short) couldn't be successful because the pre-requisite requirements of a S75 claim hadn't been met. Feeling this to be unfair Mrs W brought her complaint to this service.

Our Investigator looked into the matter and concluded that the necessary relationship was in fact in place for NBS to be liable under the quoted legislation. And found that as pool was a significant part of the booking and was in breach of contract for being too cold that NBS should pay Mrs W 20% of the cost of the booking and pay 8% simple on that from when it declined her claim to when it settles the dispute. Mrs W accepted the assessment.

NBS disagreed saying that the Debtor-Creditor-Supplier ('DCS') agreement pre-requisite requirement was clearly not in place so it couldn't be liable under the Consumer Credit Act. So this complaint came to me to decide.

In July 2024 I issued a provisional decision stating that the DCS agreement was likely to be found to be in place and that as such a 'like claim' could then be made to NBS. However I also found that the remedy previously suggested didn't fairly reflect the impairment of amenity here. I put forward that NBS should pay £400 and pay 8% interest from the date when it decided against Mrs W's claim to it until it settled the matter.

NBS responded by accepting my position. Mrs W responded with further arguments about what she considers a fair remedy to the matter.

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 am glad to see that NBS has accepted my position as set out in my provisional decision. I've considered Mrs W's arguments but I see no persuasive reasons to alter my position as described. I shall address Mrs W's key arguments under the section entitled '*further arguments*.' I shall now set out broadly the position I articulated in my provisional decision before answering those further arguments.

authorisation

Mrs W accepts she made the transaction for the property rental through the website. She doesn't dispute the amount charged on her statement or the date it was charged. And it hasn't been argued that it was double charged or applied to the wrong account. Considering what has happened here and what the parties have said, I'm satisfied on balance that Mrs W did properly authorise the transaction at the time. And accordingly it was correctly allocated to her account by NBS.

could NBS challenge the transaction through a chargeback?

In certain circumstances, when a cardholder has a dispute about a transaction, as Mrs W does
here, NBS (as the card issuer) can attempt to go through a chargeback process. I don't think NBS could've challenged the payment on the basis Mrs W didn't properly authorise the transaction, given the conclusions on this issue that I've already set out.

NBS has said that it didn't take a chargeback further because it didn't feel it had a reasonable prospect of success. It is of note that the website is the merchant of record and would be the party responding to the chargeback not the property owner. I've considered the chargeback reason codes available and concur that the specifics of this dispute don't naturally fit any of the reason codes available. I also note that the property owner had made an offer which Mrs W had refused. I also think the website would have responded to say that it had done what it was meant to do, namely introduce, and facilitate such a booking of this property. So I'm not persuaded NBS' position here is unfair or erroneous. Accordingly I don't think Mrs W has lost out here by NBS not raising a chargeback.

Section 75

Here I must consider what NBS should do. To do this, I have to decide what I think is fair and reasonable, having regard to, amongst other things, any relevant law including both legislation and case law. In this case, the relevant starting point is S75 of the Consumer Credit Act 1974 (the "CCA") which says that, in certain circumstances, if Mrs W paid for goods
or services on her credit card and there was a breach of contract or misrepresentation by the Supplier, NBS can be held equally responsible.

For clarity's sake I shall explain the underpinning legislation concerning the DCS concept before explaining my thinking on this case. S75(1) states:

"*If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, she shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor*."

So s75 only applies if:
i) There is a debtor-creditor-supplier agreement (or "DCS" agreement, for short) of the type that falls within s12(b) or (c);
ii) That agreement finances the transaction between the debtor (Mrs W) and the supplier (the Property owner); and,
iii) If, relating to that transaction, the debtor (Mrs W) has a claim against the supplier (the Property owner) in respect of a misrepresentation or breach of contract. If so, then the creditor (NBS) is jointly and severally liable to the debtor.

S12(b) applies to:
"*a restricted use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between herself and the supplier*"

S.11(1)(b) defines a restricted-use credit agreement as a regulated consumer credit agreement:
"*to finance a transaction between the debtor and a person (*the "supplier") *other than the creditor*"

Subsections 11(3) & (4) provide:
"(3) An agreement does not fall within subsection (1) if the credit is in fact provided in such a way as to leave the debtor free to use it as she chooses, even though certain uses would contravene that or any other agreement.
(4) An agreement may fall within subsection (1)(b) although the identity of the supplier is unknown at the time the agreement is made."

Section 187 provides:
"(1) A consumer credit agreement shall be treated as entered into under pre-existing arrangements between a creditor and a supplier if it is entered into in accordance with, or in furtherance of, arrangements previously made between persons mentioned in subsection (4)(a), (b) or (c).
(2) A consumer credit agreement shall be treated as entered into in contemplation of future arrangements between a creditor and a supplier if it is entered into in the expectation that arrangements will subsequently be made between persons mentioned in subsection (4)(a), (b) or (c) for the supply of cash, goods and services (or any of them) to be financed by the consumer credit agreement.
(3) Arrangements shall be disregarded for the purposes of subsection (1) or (2) if—
(a) they are arrangements for the making, in specified circumstances, of payments to the supplier by the creditor, and
(b) the creditor holds herself out as willing to make, in such circumstances, payments of the kind to suppliers generally.
(4) The persons referred to in subsections (1) and (2) are—
(a) the creditor and the supplier;

And s.189 says "finance" means to wholly or partly finance, and that "financed" shall be construed accordingly.

Much has changed since the CCA came into force including the introduction of numerous types of additional parties into payment journeys. The first main new addition to the payments journey were Merchant Acquirers. The impact of this development on the

application of s75 was considered by the Court of Appeal in the case of the Office of Fair Trading v Lloyds TSB & others [2006] ("the OFT case"). The Court of Appeal first considered whether the introduction of the four-party structure meant that the system had evolved significantly beyond the state of affairs to which S75 had been directed. They concluded that it had not, stating at paragraph 55 of their judgment:

> "*From the customer's point of view … it is difficult to see any justification for drawing a*
> *distinction between the different [three-party and four-party] situations. Indeed, in the case of those card issuers such as Lloyds TSB, who operate under both three-party and four-party structures, the customer has no means of knowing whether any given transaction is conducted under one or other arrangement. Similarly, from the point of view of the card issuer and the supplier the commercial nature of the relationship is essentially the same: each benefits from the involvement of the other in a way that makes it possible to regard them as involved in something akin to a joint venture, just as much as in the case of the three-party structure*."

They went on to say;

> *"It is clear that, whether the transaction is entered into under a three-party or four-party*
> *structure, the purpose of the credit agreement is to provide the customer with the means to pay for goods or services. It follows that in both cases the card issuer finances the transaction between the customer and the supplier by making credit available at the point of purchase in accordance with the credit agreement. The fact that it does so through the medium of an agreement with the merchant acquirer does not detract from that because it is the card issuer's agreement to provide credit to the customer that provides the financial basis for the transaction with the supplier*."

In the House of Lords in the same case Lord Mance said, in relation to the recruitment of overseas suppliers to the network:

> *"30. That, in today's market, arrangements between card issuers and overseas suppliers under schemes such as VISA and MasterCard are indirect (rather than pursuant to a direct contract as is still the case with American Express and Diners Club) is a consequence of the way in which the VISA and MasterCard networks have developed and operate. Likewise, the fact that the rules of these networks give card issuers no direct choice as to the suppliers in relation to whom their cards will be used. The choice of suppliers is, in effect, delegated to the merchant acquirers in each country in which these networks operate, and provision is made, as one would expect, to ensure and monitor the reliability of such suppliers in the interests of all network members. That network rules may not provide all the protections that they might, e.g. by way of indemnity and/or jurisdiction agreements, is neither here nor there. They could in theory do so, and it is apparent that there are some differences in this respect*
> *between different networks. The Crowther Report and 1974 Act proceed on the basis of a relatively simple model which contemplated that card issuers would have direct control of such matters. A more sophisticated worldwide network, like VISA or MasterCard, offers both card issuers and card holders considerable countervailing benefits. Card issuers make a choice, commercially inevitable though it may have become, to join one of these networks, for better or worse*."

Lord Mance was talking about the conditions that existed almost twenty years ago, because the case from which she was hearing an appeal went to trial in 2004. But I think it is clear that
even by then the commercial practices by which card networks recruited suppliers had evolved by developing a system that left supplier recruitment to intermediaries, and card issuers were faced with an essentially commercial decision as to whether to participate in

network that included suppliers who had been recruited that way. Since 2004, new technology and the growth of internet commerce have opened up additional channels for recruiting suppliers and routing payment to them (for example, “payment facilitators”, which are now an established part of the payments industry) and, again card networks have changed their rules and practices in response.

Having provided some important context to the circumstances in Mrs W’s case, I need to now
establish the exact nature of what happened as best I can and the relation between the parties involved.

The DCS issue

I have considered the particular facts of Mrs W’s case. In order for s75 to apply there has to have been ‘arrangements’ between NBS and the property owner (the Supplier) to finance transactions between NBS’s cardholders and the property owner. It’s clear that there was no direct arrangement between them, but this isn’t a requirement for the application of S75. NBS has made the point there isn’t a direct arrangement in this case, but for clarity and certainty I reiterate there is no requirement for the arrangement to be direct for the application of S75.

I say this because the Judge who heard the OFT case at first instance ([2005] 1 All ER 843) had also considered the meaning of the word “*arrangements*”, as used in section 12, and whether there existed relevant arrangements between creditors and suppliers (the property owner here) in the four-party situation. She said that the use of the word showed a deliberate intention on the part of the drafter to use broad, loose language, which was to be contrasted with the word “agreement”. In the Court of Appeal, the creditors argued that arrangements should be given a narrower meaning that took the four-party structure outside the definition. But the Court of Appeal agreed with the Judge that “arrangements” had been used to embrace a wide range of commercial structures having substantially the same effect. They held that it was not required for arrangements to be made directly by or between the creditor and supplier, merely that arrangements should exist between them, and it was difficult to resist the conclusion that such arrangements existed between credit card issuers and suppliers who agreed to accept their cards, and stated:

> “*Moreover, we find it difficult to accept that Parliament would have been willing to allow some consumers to be disadvantaged by the existence of indirect arrangements when other consumers were protected because the relevant arrangements were direct*.”

I’ve also considered the recent High Court case of Steiner v National Westminster Bank (2022) EWHC 2519 (‘the Steiner case’). This case involved payments to a trust for the provision of a timeshare supplied by a timeshare provider. The High Court dismissed the claim under s75 on the basis that the timeshare purchase was not made under a DCS arrangement. This was because payment had been made in the first instance to the trust company, whereas the claim related to agreement to purchase a timeshare from the timeshare provider. Mr Steiner’s credit card was issued under the MasterCard scheme and the trust company was a member of the MasterCard network, but the timeshare provider was not.

The Judge (Lavender J) held that central question was not whether "arrangements" existed between the bank and the timeshare provider at the time when Mr and Mrs Steiner had entered into their agreement with the timeshare provider and Mr Steiner had used her card to
pay the trust company. Rather, the question posed by s12(b) CCA was whether Mr Steiner’s

credit card agreement with the bank was made by the creditor (i.e. the bank) "*under pre-existing arrangements, or in contemplation of future arrangements*", between the creditor (i.e. the bank) and the timeshare provider. When a bank made an agreement with one of its customers in relation to a card issued by the bank to the customer, then the agreement was made under the card network, which constituted "arrangements" between the bank and the other members of the network. So, if a supplier was already a member of the card network, the agreement was made "*under pre-existing arrangements ... between the bank and the supplier*". The bank was also aware that other merchants were likely to join the card network in the future, so in that respect the agreement was made "*in contemplation of future arrangements",* between the bank and merchant who subsequently joins the card network.

However, in the absence of specific factual evidence as to the bank's state of mind, the Judge said it was difficult to envisage that a bank which issued a card to its customer and made a credit card agreement in relation to that card made that agreement under, or in contemplation of, any arrangements other than the card network. And, as the timeshare provider was outside the card network, it didn't supply the timeshare under a debtor-creditor-supplier agreement.

Is there a DCS agreement?

The question of whether Mrs W's transaction took place under a DCS agreement seems to me to turn in this case on two matters: first, whether there existed arrangements between NBS
and the property owner for the financing of transactions with property owner's customers; and second, if such arrangements existed, whether that was the case when NBS entered a credit agreement with Mrs W or, if the arrangements came into existence after that, whether NBS
contemplated that they would do so. I'll examine those questions in turn.

1) **Arrangements**

Our Investigator looked into the transaction primarily based on the information NBS had given this service about the presence of a fourth party in the transaction namely the website introducer called Vrbo.

Vrbo is a well-known introducer website which introduces holiday makers wishing to rent properties to property owners as well as providing some associated financial transactional services. It is significant in size and has said that it has over 48 million active monthly users. It was purchased in 2015 for around 3.9 billion dollars by Expedia Group giving some context to its scale. As its of such scale it is unlikely, to my mind, that the purchases of such rentals made through the card networks are being done without their knowledge or consent. It seems clear to me that Vrbo, through the Vrbo Accommodation Fee Collection Agreement and associated contracts with its parties, operates as a payment facilitator (amongst other services it provides), and is recognized as such under the card networks. I say this because of a number of key terms within its terms and conditions. These include:

Clause 1.15 says services will be provided by Vrbo in "*conjunction with a merchant acquirer* (named parties) *service provider processor, and/or* (or PIN debit acquirer) (or any other equivalent third party) *and their respective designated member bank*(s)". This contemplates that credit card payments will be processed via these types of business, including merchant acquirers and (perhaps also) payment facilitators, which routinely constitute DCS arrangements with third party suppliers.

In the introduction to the agreement it says "*Using third-party payment services providers that You have separate and direct agreements with, we facilitate the collection and payment*

of Payments (as defined below) from the individuals who have booked the Property". Which means that property owners were required to have contracts with payment services providers to enable Vrbo to collect such payments.

And lastly organisers are required by Vrbo to comply with any applicable card scheme rules (clause 1.15 also). In essence it appears that property owner had outsourced its payments processes to Vrbo. It has terms and conditions including that all applicable network rules must be complied with. And within those terms and conditions some networks are named including Mastercard, Visa and American Express and thus the network relevant here. And I've also considered the network rules applicable here and this need to comply with the network rules by its participants is mirrored within those.

So the Property Owner has an agreement with Vrbo which includes the obligation of adhering to the card network rules here. Vrbo is obliged to follow the same network rules also. And NBS, by using the card scheme here, is bound to follow the same card scheme rules as well. And Mrs W's card use is governed by her obligations to NBS through her contract with it. In essence all parties here all have different roles but are all obliged to work within the rules of the card network to complete the same transaction. NBS's complaint handler apparently didn't understand the Investigator's pointing to the card scheme rules in their assessment. The crux here is that all parties have different roles but are all obliged to act within the rules of the card scheme and that simple fact means there are '*arrangements'*.

I should add, at this juncture, that NBS has provided limited legal analysis to support its argument here on DCS other than to say it paid Vrbo only and Vrbo wasn't the supplier of the property here. It has not explained why the arrangement in this case should be distinguished from the established legal principles set out in the cases such as in the OFT case or in the Steiner case. It has only pointed to presence of Vrbo and in essence said that there is no relevant DCS relationship for the supply of the property due to that fact.

It may be that in this case there was a Merchant Acquirer present in the payment journey as well. But whether there was a four-party arrangement here or indeed a five-party arrangement present in Mrs W's case, either way I'm still satisfied that there are sufficient arrangements between NBS, as card issuer, and the Property owner, as supplier, for the purposes of establishing a DCS relationship, and I shall now explain why.

In Mrs W's case, I think there are indications of relevant arrangements even before looking at
the contractual obligations undertaken by the parties, given that Vrbo was specifically, and publicly in the business of both introducing property owners to prospective property renters and processing or facilitating financial transactions such as the type of transaction in this case in unison with its property introducing and property rental facilitation service. It should also be noted that Vrbo is a large company generating vast numbers of transactions which go through all the card networks regularly. And as I've said, clearly the network here (and other networks) have decided to allow such payments to go through their networks. And it would seem that considering the commercial benefits of such volumes of transactions this is entirely understandable.

Here Vrbo is specifically and publicly in the business of providing financial transactional services to suppliers (such as the Property owner) as a significant part of its overall offering. NBS would be able to know the parties within the arrangement here included Vrbo and that Vrbo' s business involved processing payments under the network for its customers, such as the Property owner. And the Property owner was obliged through its agreement with Vrbo to also be bound to follow the rules in the card network in this case.

Fundamentally, it follows that NBS financed the transaction between Mrs W and the property owner via Vrbo by making credit available at the point of purchase in accordance with the credit agreement between them. The fact that it does so through the medium of Vrbo does not detract from that: it is NBS' agreement to provide credit to Mrs W that provides the financial basis for the transaction with the property owner. And all of this done with all parties being required to comply with the card network rules.

I would also note that both NBS and property owner undoubtedly benefit commercially from the involvement of the other, through the intermediations of Vrbo (and any Merchant Acquirer present), in a way that makes it possible to allow the transaction to happen. By financing purchases from the property owner, NBS are able to lend money to their customer (Mrs W) and make interest and/or other charges for that service, whilst the property owner is able to obtain payments from NBS' credit card holders and so benefit from the credit NBS extended (albeit indirectly).

2) Contemplation

It is possible that NBS may argue that such arrangements as those present in Mrs W's case were outside of its contemplation at the time when it agreed with Mrs W to open her credit card account, and thus there is no DCS agreement for it to be liable under.

Given that payments systems and card networks have continuously changed and evolved over the past half century, I think it likely that NBS always understood that the Mastercard scheme would be operated in accordance with evolving rules and commercial practices, and that this evolution was likely to bring in new groups of network participants. NBS must have known the card schemes such as Mastercard and Visa would try to adapt their networks to accommodate major changes in the payments industry; and it would certainly not have expected that each customer to whom it issued a credit card would only make purchases from the suppliers recruited under the rules and practices applicable at the date when the credit agreement was first entered into. Rather, it would have contemplated that all its credit card holders would (irrespective of when their credit agreement started) have access to the same suppliers, i.e. those suppliers allowed under the respective network. So, I think NBS must have contemplated, when agreeing to give Mrs W a credit card, that her card would be used to finance purchases from whatever suppliers the network's changing rules and practices accommodated at the time of the purchase.

In this case, the credit card payment went to the Property owner via Vrbo which are/were recognised participants in the same card scheme as NBS, and this transactional process between debtors and suppliers is commonplace within the rules of the scheme. It is a method of payment to a type of supplier that the network's rules and practices accommodate and, as
such, I consider that it was within NBS's contemplation when the credit card agreement was entered into.

Accounts

It may be that NBS points to the fact that the transaction journey is from Mrs W's card through Vrbo' s payment processing and then onto the Property owner's accounts as a reason why to consider their might not be a DCS agreement. But I'm not persuaded by this. There are still the necessary arrangements to my mind. Merchant Acquirers, Payment Processors and those parties providing currency conversion services have accounts in which transactions pass through on their journey from debtor to supplier. I've not seen any persuasive reason to distinguish what happened here from the authorities mentioned before.

NBS's arguments

NBS has pointed to Vrbo' s terms and conditions noting that it makes clear Vrbo are "*not party to any contractual relationship between the host and the party, and that the host is solely responsible for performing the obligations. As we are jointly liable, and similarly bound to the terms and conditions we cannot be held liable for any contract, just like VRBO are not*." This argument doesn't deal with the point the investigator in this case made. Here it is clear the property owner is the supplier and NBS is the creditor and Mrs W is the debtor. The failing here was the heating of the pool to agreed temperatures not the performance of Vrbo in its contractual obligations to any party but rather the failings between the property owner in its supply of the property including pool. Just because Vrbo cannot be held responsible for the failings of the property owner doesn't mean NBS cannot be bearing in mind it financed the rental of the property.

NBS has also said Vrbo "*states that they charge a service fee, indicating that they are performing a service which is greater than just payment transferring. This can be seen by the fact that the companies who are usually considered as payment facilitators do not charge these fees, merely acting like an online wallet*." Just because Vrbo provides additional services to the parties doesn't mean the necessary arrangements aren't in place. I'm satisfied they are in place for the reasoning provided. There is nothing in the legislation quoted that persuades me that ancillary services provided by introducers such as Vrbo negate the application of the CCA here.

So all in all I've not seen any persuasive evidence that the additional services provided by Vrbo interrupts the DCS relationship. I'm also satisfied this transaction fits within the financial limits set out in relation to S75 claims as described in the Act. Accordingly I'm satisfied that there is the necessary DCS agreement and a S75 claim can be successful if the other requirements are made out.

Liability

As I've explained, for NBS to be liable under S75 a breach of contract or a material misrepresentation needs to be made out. Here NBS have made few arguments throughout this matter on the facts of what happened between Mrs W and the property owner (but rather focussed on DCS).

It is clear here that prior to Mrs W making this payment the property owner made representations about the heating of the pool which Mrs W relied upon and which turned out to be untrue. This seems to have been accepted by the property owner in their offer of $200 in the email of April 2023 which noted "*we believe is fair since the pool was just a part of the amenities we offered. We have done everything we can to remedy the situation, but unfortunate circumstances made it so it didn't happen*."

So it is clear that there was a breach of contract here and probably a misrepresentation also considering the evidence provided by Mrs W that the pool didn't get close to the quoted temperatures. Nevertheless it is also clear that Mrs W and party stayed for the entire duration of the booking. I've also looked into outdoor pool temperatures and although Mrs W suggests that the pool temperature made it unusable I'm not persuaded by this. She has pointed to the pool being 57f on arrival and never getting above 72f during the stay (approximately 13 degrees centigrade to 22c). This range equates to common water temperatures for outdoor swimming in the UK from spring to summer (lakes rivers etc). Indoor heated pools normally range from 25c to 29c (77f to 84f). So although it is clear that the pool didn't meet expectation in terms of temperature and at the coldest it would have been chilly it was far from unusable.

Furthermore the property owner makes a fair point that it was only part of the offering made and used by Mrs W. I've considered the property rental as a whole including its location and it size and other relevant factors as to what was offered. The property had four bedrooms and three bathrooms and a floor space of over 3000 sqft and the ground space was in excess of 6500 sqft. So this was a substantial property located in a well-known tourist city. It is clear to me that Mrs W didn't solely hire this property for the pool. I think the building, location, bedrooms, and other amenities were also factors in her decision to rent this property. So I do not agree with the loss of amenity here fairly equating to 20% or approximately £1315. There wasn't a full loss of amenity here, but rather an impairment of one of the amenities (the pool) to what I consider to be a modest level. I also think the offer of $200 is too small to reflect the impairment considering the overall cost of the rental and the clear importance of the pool to Mrs W.

Further arguments

Mrs W has focused, understandably, on the temperature of the pool in her arguments which I will summarise and respond to in turn.

Mrs W accepts that she had full use of all the amenities rented other than the pool, which I'm glad to hear as they evidently made up a substantial amount of the overall offering. This was a stay in one of the most famous tourist attraction cities in the world. This wasn't a stay in a place solely known for its single swimming amenity.

She says they didn't have any realistic option but to stay at the accommodation once they discovered the issues with the pool. That maybe the case, however they didn't leave the property and NBS is only responsible for what happened and what flowed from that.

Mrs W says she fails to see the relevance of my comments on water temperature indoors and out. Mrs W has argued repeatedly and at length about the importance of swimming to her and those who stayed at the property. Mrs W provides a UK based address as her primary address so I think providing UK based guidance for context in regard to water temperatures for swimming generally (indoors and outdoors) for people who say that swimming is such an important feature of their holidays is relevant. Furthermore the reason I provided such broad context is because the pool was usable. Had the pool had no water in it (for example) then it wouldn't have been relevant what the water temperature was because the pool would have been unusable completely. But that isn't what Mrs W argued nor was it the fact of the matter. She argues it was too cold to use at all, but for the reasons given I'm not persuaded by this. So I think it fair to NBS and Mrs W to consider this as an impaired amenity (of many at the property) rather than a total loss of amenity.

Mrs W points to other online data regarding pool temperatures. It is true that different websites provide a range of suggested temperatures, however from what I've seen these are broadly in the same regions of temperatures. I quoted a range of temperatures across a number of websites which I felt fairly covered the distribution of recommended temperatures. I'm sure NBS, if it had turned its mind to this point could have pointed to other data which suggested lower temperatures than the source Mrs W pointed to.

Mrs W points to spending money on other attractions including swimming elsewhere. These costs arise from decisions Mrs W took to use such facilities. These are not causal losses from the breach here and NBS is only required to cover actual losses and made out consequential losses.

Accordingly and in the round, I'm satisfied that a fair resolution to this case to reflect this impairment would be £400. So under S75 it is my decision that there is a breach of contract here and NBS is liable for the reasons given.

Putting things right

It is my decision that NBS should pay £400 and pay 8% interest on this amount from when it rejected Mrs W's claim to it until it settles this matter. HMRC requires NBS to deduct tax from this interest. NBS must provide Mrs W with a breakdown of the tax taken if she asks for it.

My final decision

It is my decision to uphold this complaint about Nationwide Building Society. I direct it to remedy the matter as I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 2 October 2024.

Rod Glyn-Thomas
Ombudsman