

The complaint

Mrs E complains that Nationwide Building Society has treated her unfairly in relation to a purchase she made using her Nationwide credit card.

What happened

Mrs E is represented by a relative in her complaint - but for ease of reading, I'll refer to everything as if Mrs E had said it or done it.

Mrs E bought furniture from a third party retailer I'll refer to as "R". According to Mrs E within a couple of years the tops of the furniture had become discoloured. Mrs E considers that this has happened due to a manufacturing fault which makes the furniture not of satisfactory quality. She considers that this in turn is a breach of the contract she has with R. Mrs E took the matter up with R, but she got nowhere.

Therefore Mrs E tried a different approach because she now wanted a full refund. Due to the type of credit Mrs E used to buy the furniture she potentially has rights, under Section 75 of the Consumer Credit Act 1974 against Nationwide for what she sees as the breach of contract on the part of R. Therefore Mrs E raised a claim against Nationwide under Section 75.

According to Nationwide Mrs E did not bring her claim to it until four years after she bought the furniture. Nationwide told Mrs E it might help with her claim if she were to get an expert to examine the furniture to give an opinion about what was wrong with the furniture (if anything) and what had likely caused this. It said if her claim succeeded it would pay for this expert's report. But Mrs E declined to provide an expert's report, on the basis that she did not know any furniture experts, did not trust recommendations from people she did not know, and she did not want a complete stranger coming to her home and potentially giving her Covid.

Ultimately Nationwide did not meet Mrs E's claim because it did not agree that there had been any breach of contract on the part of R.

However, Nationwide thought there had been some confusion on its part on one occasion, about what her complaint was about. Specifically, it referred to the furniture as a sofa which it is not. Therefore, Nationwide sent her £25 to make up for the distress and inconvenience this most likely caused her to experience.

Mrs E considers Nationwide acted unfairly in declining her claim and complained about this. Further, when she sent it her claim, she tells us that she told it she was unwell due to a serious health condition. Mrs E tells us Nationwide should have taken this on board and dealt with her differently as a result, but it did not. Instead it made her "*jump through hoops*".

To put things right Mrs E wants Nationwide to give her a full refund, apologise to her and explain how it is going to make sure other customers do not go through the same unsatisfactory experience she had.

Dissatisfied, Mrs E complained to our service.

Once Mrs E's complaint was with us Mrs E provided us with further information about her health and how it impacted on her ability to bring her claim and make her complaint about

that claim. For example she said it would've helped her if Nationwide had been prepared to accept evidence verbally from her rather than asking her to put things in writing.

In the light of what Mrs E told us, we asked Nationwide if at the time Mrs E was making her claim had Mrs E had told it about her health and requested that it take this into account when dealing with her. Nationwide responded that it had no record of this.

One of our investigators looked into Mrs E's complaint. Our investigator did not recommend that Mrs E's complaint be upheld.

Nationwide accepted our investigator's recommendation, Mrs E didn't. I've summarised below what Mrs E told us in rejecting the recommendation.

Mrs E indicated that the photos she sent of the furniture was proof enough, without an expert's report, that the furniture was not of satisfactory quality. Moreover, Mrs E thought once Nationwide had the photos if it did not agree that this demonstrated the furniture was not of satisfactory quality it should have given an explanation for what had caused the discolouration. In addition, Mrs E's position is that she did not understand how Nationwide could dispute her photographic evidence without instructing a furniture expert itself.

Further, Mrs E told us Nationwide handled her claim against it under Section 75 inappropriately, and that had put her at a disadvantage. For example, she indicated that Nationwide asked for the same information on more than one occasion which was particularly unfair as she was unwell, and it knew that.

Mrs E also complained about complaint handling. For example she thought Nationwide did not tell her about when it has eight weeks to provide a final response to a complaint.

Mrs E asked that an ombudsman review her complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

In considering what is fair or reasonable, I need to have regard to relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

Why I think most likely the furniture was of satisfactory quality

I consider that, amongst other things, Section 75 and the Consumer Rights Act 2015 (the "CRA") are relevant law in relation to this complaint. I also think a process known as chargeback ought to have been considered by Nationwide. I'll talk about Section 75 and the CRA first then go on to look briefly at chargeback.

The general effect of Section 75 is that if Mrs E has a claim for misrepresentation or breach of contract against the supplier she can also bring a like claim against Nationwide provided certain conditions are met.

The CRA implies certain conditions into contracts between consumers and traders, such as the contract in this complaint. In particular, the CRA provides that goods sold under such contracts must be of satisfactory quality.

The relevant law says the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

In order to uphold this complaint point, I must be satisfied that the furniture was not of satisfactory quality, and that this is therefore a breach of contract which I can fairly or reasonably hold Nationwide responsible for.

Mrs E and Nationwide disagree fundamentally about whether the furniture was of satisfactory quality. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I recognise that Mrs E might think that Nationwide made it harder for her than it should have done by not simply accepting her photos as proof that the furniture was not of satisfactory quality. Also she appears to think that if Nationwide was not going to accept her version of events it had to provide its own alternative compelling version of events. I should make it clear, that under relevant law, the onus is not on Nationwide to explain why the furniture is discoloured. Neither does it have to call in an expert to substantiate its rejection of her claim. Rather the onus is on Mrs E to demonstrate that the furniture is not of satisfactory quality. And I don't think that she has. I'll explain why I say this.

There are any number of reasons why the furniture might appear to be discoloured, I can't fairly or reasonably discount all these other possibilities and based solely on the photos, jump to the conclusion that more likely than not the cause is an inherent fault. I say this because I can see from the photos that there appears to be discolouration but what the photos don't tell me is the most likely reason why this is. And in the very particular circumstances of this complaint that's the information I need to be able to uphold this complaint.

It would have been helpful to have an expert's report. Most probably an expert's report would have indicated the most likely reason for what appears to be discolouration. This in turn would have helped me decide if the furniture was or was not of satisfactory quality. Mrs E has declined to allow an expert to examine the furniture, that's her choice to make. But it does mean I don't have the evidence that I need to uphold her complaint in the very individual circumstances of her complaint.

Why I don't think it would have been appropriate for Nationwide to have raised a chargeback

Chargeback is a process which in some circumstances could be a route Nationwide could have used to get Mrs E a refund. But in the circumstances of this complaint I don't think a chargeback would have been appropriate based on the information I've seen.

Vulnerability

Mrs E says she was a vulnerable consumer by reason of her health. She tells us she told Nationwide this and it did not make appropriate allowances for this. For instance, she would have found it helpful if when it was investigating her claim if Nationwide had allowed her to provide her evidence verbally.

A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. I think Mrs E could have been a vulnerable consumer due to her health.

Financial businesses are expected to treat their customers with a level of care that is appropriate given the characteristics of the customers themselves. The level of care that is appropriate for vulnerable consumers may be different from that for others and firms should take particular care to ensure they are treated fairly.

If I thought that Nationwide had treated Mrs E unfairly as a vulnerable consumer I would ask it to take responsibility for this.

Therefore we asked Nationwide what it knew about Mrs E's health and if she asked it to help her by, for example, letting her provide information verbally. We also asked it for its records.

Nationwide told us Mrs E did not tell it about her vulnerability due to her health. Nor did she tell it that it needed to communicate with her in a particular way to take account of her health.

According to Nationwide's records, which I've gone through carefully and which I have no reason to doubt on this point, Mrs E did not tell it about her health condition nor ask it to take information from her verbally only.

In the circumstances, I don't think I can fairly or reasonably say Nationwide let Mrs E down by not taking her health into account when dealing with her.

How Nationwide dealt with Mrs E's claim under Section 75

In general I've seen nothing that satisfies me that Nationwide handled Mrs E's claim inappropriately.

The thrust of this complaint point seems to be that Nationwide asked for things it did not need. However, I don't see it that way. Rather, Nationwide had to establish, what Mrs E had bought from R, what R's stance was and what most likely had gone wrong with the furniture and why. Therefore, as far as I can see the information Nationwide asked for was reasonable. Amongst other things, it asked for invoices from R, correspondence with R and photos of the furniture. Even if it did ask for some of the same information twice, which I am sure could have been tedious to deal with, I don't see how that put Mrs E at a disadvantage.

I don't agree by asking for relevant information Nationwide put Mrs E at a disadvantage and/or treated her inappropriately.

Complaint handling

Moreover, Mrs E is dissatisfied that Nationwide did not tell her immediately about the rules regarding complaint handling and the relevant deadlines in those rules.

But firstly, those rules were not relevant at the point Nationwide was looking into her claim. They only became relevant once Nationwide had assessed and rejected her claim and she complained about this. It was at that point she had a complaint for the purposes of those rules.

Secondly, since Mrs E's complaint has been with us the focus of her complaint has turned more and more to her dissatisfaction about the way Nationwide has dealt with her complaint and what Nationwide's regulator says about complaint handling in general. For example she thought Nationwide should have told her about the circumstances when it has eight weeks to give her its final response about a complaint.

However, I must explain that this isn't something I'm able to consider. Our rules only allow us to consider complaints about regulated activities. Complaint-handling isn't a regulated activity in its own right, nor is it one of the specified non-regulated activities that I'm able to deal with under our compulsory jurisdiction. It's also not an activity that's ancillary to a regulated activity, such as account administration or advice. Therefore, a complaint about the way Nationwide dealt with a complaint doesn't fall within the scope of our rules, and so I

don't have any legal power to consider Mrs E's dissatisfaction about this aspect of her complaint.

For all of these reasons I've no proper basis to say that Nationwide acted inappropriately. Therefore it follows I've no fair or reasonable grounds for saying it must take any further action.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 6 November 2023.

Joyce Gordon
Ombudsman