

The complaint

Mrs B complains Nationwide Building Society has unfairly declined a claim she made under section 75 of the Consumer Credit Act 1974. She would like Nationwide to honour her claim.

What happened

Mrs B is represented in her claim by Mr B, for ease I will refer to Mrs B throughout my decision.

Mrs B decided to proceed with a quote from a third-party supplier I'll call "S" to provide and install foam insulation in the loft of her home. On 15 September 2016, Mrs B made a deposit payment of £2,580 on her Nationwide credit card. The work was completed on 22 September 2016. It was briefly inspected by Mr and Mrs B – before she signed the Customer Satisfaction Form and payment was made. Unfortunately, following the completion of this work both Mr and Mrs B suffered from ill health and were not able to inspect the work further for some time.

In August 2017, Mrs B received quotes for a replacement porch which she decided to proceed with. The new porch installation was completed on 17 November 2017. Within a few weeks, following heavy rainfall, water began leaking into the new porch at quite an alarming rate. The leak seemed to be coming from between the porch box gutter and the fascia.

Mrs B contacted the company who supplied and fitted the new porch. It carried out a repair to the new porch and it was assumed the leak had been repaired. But following further heavy rainfall, water began pouring through the porch again. On 26 January 2018, Mrs B contacted the company to complain. It came back and inspected the porch. The inspector removed a small piece of the soffit beneath the fascia board to which the porch gutter box had been attached. The company advised Mr and Mrs B that it felt the issue lay with the foam insulation. As it was attached to the roof tiles the porch company couldn't remove them without cutting through or breaking the tiles themselves. It suggested Mrs B contact "S" to have it inspect the roof and repair any leaks.

Mrs B contacted "S", but it wasn't persuaded that the leak had anything to do with the foam insulation. It said over 17 months had passed since the foam insulation was carried out and found it highly unlikely to be the cause of the issue, but it offered to send a technical surveyor out.

On 23 February 2018, the surveyor carried out the inspection and took a number of photographs. The surveyor said he would assess the photographic evidence and come back to Mrs B.

On 28 February 2018, Mrs B spoke with "S". It didn't agree the leak was its responsibility and explained the 12 months guarantee for the foam installation had now expired. Mrs B then started to source suitable roofing companies to come and assess the issues. This proved to be problematic for a number of reasons, but mainly because the companies she approached were either unable or unwilling to carry out any remedial works.

On 2 April 2018, Mrs B wrote to "S" and attached photos to keep it updated on the lack of progress with getting the repair done and requested a further visit to view the problem.

On 16 April 2018, "S" responded and said it remained of the view that as no leaks were identified for the period of 17 months after the foam installation was carried out, and that the problems with the leak surfaced after the new porch was installed, this was likely cause of the issue. It mentioned that the new porch was of a different design in relation to water collation and guttering. It further explained that for the large amount of water that had entered the new porch, if there had been any issue with the foam spray it would have been immediately evident. But "S" did acknowledge that it could see from the photographs there were areas where the foam application was not carried out to standard and offered to correct and extend the warranty.

Following this response, Mrs B decided to proceed with the removal of the roof tiles by the porch to address the leak. The roofing company began the work on 29 May 2018. Mr and Mrs B felt that some of the foam was impaired and wrote to "S" on August 2018 to inform it of their intention to remove all the work carried out by them. Mrs B describes how they had now lost all confidence in the product.

On 26 September 2018, as the roofing company began removing the foam insulation and repairing and replacing the roof, Mrs B wrote to "S" with further findings. These included, but were not limited to, electric cables covered in foam, existing Eco fibre loft insulation left in place and so the foam insulation has welded it in place to the joists, solidifying it all together. The letter described how a number of areas had been missed altogether and so its wasn't possible for the contract to have been fulfilled as promised. Mrs B explained when the front roof tiles were removed it left a very large gap over the porch and front of the bungalow. This only became evident when the space blanket the installers had pushed into the void was removed.

On 25 October 2018, all the roofing work was completed at a total cost of £18,065.28.

On 25 February 2019, after a number of unsuccessful attempts to pursue "S" for the costs Mrs B contacted Nationwide to raise a Section 75 claim.

On 3 April 2019, Nationwide responded, it declined the claim. It said that as remedial work had been carried out by a third party in replacing the roof tiles and removing the foam installation, she was no longer in a position to evidence that the initial work carried out by the supplier was of an unsatisfactory standard and that had directly led to the problems she had experienced.

Dissatisfied Mrs B brought her complaint to this service.

An investigator looked into things for Mrs B. He said from the photographs taken by Mr and Mrs B he agreed "S" did not appear to have carried out the foam installation with the required skill, care and due diligence. The remedy should have been for "S" to carry out remedial work. But because Mrs B had a third party carry out remedial work, he couldn't establish what the cause of the leak was or whether it was the failure of the foam insulation. He felt that as the foam insulation had been in place 17 months, any serious water ingress would most likely have been notice before the installation of the new porch. He also said he didn't agree the removal of all the foam insulation and subsequent repair and partial replacement of the roof to be proportionate especially given the cost of this work was more than £18,000. Given all the available information he didn't feel Nationwide had acted unfairly or unreasonably in declining the Section 75 claim and so he wasn't able to ask it to do anything further.

Mrs B didn't agree. She provided a detailed timeline of the events. She maintains a breach of contract has occurred and as such Nationwide is jointly responsible with "S". She asks for an ombudsman review.

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 have looked at all the information from both parties afresh. Having done so, I don't think I have any proper basis to tell Nationwide it must do anything more. I realise this is likely to disappoint Mrs B please let me explain why I've come to this conclusion.

I thank Mr and Mrs B for the detailed timeline of events which has provided a clear overview of the what has happened over the last few years. I sympathise with the upset this matter must have caused and I am acutely aware they have both suffered ill health and a bereavement in recent times which must have been very distressing and I'm sorry for their loss.

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. I haven't. 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.

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.

Mrs B is relying on the rights she tells us she has under Section 75. I think it's important to set out my role here. In considering a complaint about a financial services provider, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, in deciding what's a fair way to resolve Mrs B's complaint, I have to take account of relevant law, amongst other things. Section 75 is relevant law. Therefore, I've taken it into account. But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mrs B pursued a claim for misrepresentation or breach of contract. Our service is an informal alternative to the courts.

In certain circumstances, Section 75 gives a consumer an equal right to claim against the supplier of goods or services as the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mrs B's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation, and that Nationwide's response to the claim wasn't fair or reasonable.

The crux of this complaint is that the foam insulation carried out by the supplier was not done with reasonable care and skill - which caused leaks from the roof and resulted in Mrs B incurring additional cost of £18,065.28 to replace the roof tiles to correct the sources of the leak and clear the extensive fouling of electric cabling in the roof. Mrs B is seeking redress of £7,374 as compensation for the breach of contract, plus £5,348.40 for the hire of

scaffolding, the cost of clearing foam from the electric cables and replacing of tiles along the bottom three rows of the roof.

I have looked at the photographic evidence provided by Mrs B. I'm not an expert in loft insulation but I can see foam insulation protruding from underneath the tiles, the gaps and foam spray covering the cables. I don't think a reasonable person would expect to see issues such as these on completion of a foam insulation and so I agree it looks as though elements of the work was not carried out with reasonable care and skill by "S", so I'm in agreement that Nationwide would be responsible for providing a remedy where the supplier has not done so.

In taking into account relevant law, I would now turn to the Consumer Rights Act (CRA) as the relevant legislation in terms of how matters should be put right. It says a business is allowed one opportunity to rectify any faults. So, the remedy suggested by the Act is for the service to be carried out again, but in this case the supplier was not given the go ahead to carry out any remedial work.

What then follows is two separate companies each giving Mrs B a different view as to what has caused the problem with the water leaking into the porch. "S" the supplier of the foam installation says any water leaking as a result of its work would have been evident within the last 17 months. As this problem only occurred when the new porch was fitted it feels the porch company has most likely caused the issue. I have also noted that prior to the new porch being fitted, Mrs B didn't notice any leaks either in her existing porch or anywhere else in the roof space.

The porch company suggested Mrs B contact "S" because the tiles could not be removed without breaking them. Mrs B said that the roof tiles for the last two/three rows over the kitchen was sprayed with foam - when it should have been left with roofing felt in place and without any foam on them. So, it seems because the foam spray was applied to these rows of tiles that prevented the porch company from lifting them to enable the porch felt to channel water into the box gutter.

I'm in agreement with the investigator when he says at this point "S" should have been informed of the situation and a visit taken place to inspect the issue before the new porch was installed.

I appreciate Mrs B was being given conflicting information from two companies and was very concerned about the quality of the workmanship and her confidence in the foam insulation product was diminishing and so she turned to another professional, this time a roofing contractor to look at the problem.

What probably should have happened at this stage would have been to engage an independent report on what the problem was, how it occurred and whose responsibility it was to put it right. But unfortunately, this wasn't done.

When Mrs B engaged the services of a roofing contractor and decided to have the roof tiles stripped and remove all the foam insulation from the property this effectively removed the opportunity for "S" to carry out any necessary remedial work.

I appreciate "S" wasn't responding to Mrs B's updates on what she intended to do to rectify the problems as she saw them and I understand her lack of confidence in "S" but in failing to allow "S" to carry out the remedial work it is now no longer possible to know if it had, would this have rectified the issues Mrs B had experienced.

This means I have to make a decision based upon a balance of probabilities, that is to say what I think is more likely to have happened based upon the evidence available and the wider circumstances.

The photographic evidence whilst showing a probable lack of skill, diligence and care doesn't establish that the leak into the new porch was as a result of foam insulation. There also isn't enough evidence to suggest that the necessary remedy was to remove all the foam insulation from the property. I say this because there hadn't been any known issue prior to the installation of the new porch for over 17 months and Mrs B hasn't reported any problems anywhere else with leaks. I appreciate Mrs B has pointed out that some of the foam insulation is missing and some has been sprayed on electric cabling. I have also noted the roofing survey says all the underfelt should be removed but Mr B has pointed to areas and provided photographic evidence where this was not the case. But prior to the porch installation none of these issues had caused a problem.

When Mrs B brought the problems to the attention of "S" it offered to carry out the remedial work necessary at no cost by extending the warranty. This would have been in my view, the appropriate remedy. But because Mrs B chose to have a third party, the roofing contractor, remove all the foam installation, I now can't reasonably say, notwithstanding the identified concerns, the foam insulation was the cause of the leak into the porch.

In terms of the additional costs Mrs B has had to incur in repairing her roof to eliminate any leaks from reoccurring. I appreciate this is a significant sum of money but I'm afraid I can't fairly say Nationwide should bear the cost incurred or refund the amount paid for the foam insulation. In my view Mrs B could have mitigated her losses and given her consent for remedial work to be carried out by the supplier.

I know my decision will come as a disappointment to Mrs B, but my decision doesn't prevent Mrs B from taking legal advice should she wish to do so. I appreciate her insurance policy declined to pursue the claim. But from what I can see that was on the basis of the financial strength of the company "S" rather than the basis of the claim.

I can only re-iterate my role here has been to determine if Nationwide, based on the evidence available, has unfairly declined Mrs B's Section 75 claim. I'm persuaded Nationwide has handled Mrs B's claim fairly and reasonably and so I won't be asking it to do anything further.

My final decision

For the reasons I have given I'm unable to uphold this complaint and make no award. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 18 March 2021.

Wendy Steele
Ombudsman