

The complaint

Ms F complains that Nationwide Building Society (“Nationwide”) didn’t uphold a claim she made to them under section 75 of the Consumer credit Act 1974 (“section 75”).

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again here. Instead I’ll focus on giving my reasons for my 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.

I know it will disappoint Nationwide, but I agree with the investigator’s opinion.

Where the information I’ve got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point it’s not because I’ve failed to take it on board and think about it but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a credit card, as is the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there’s either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

Nationwide have explained that they rejected Ms F’s section 75 claim as she refused to allow the merchant an opportunity to repair the boots she’d had custom made for her daughter. I don’t think that was reasonable of Nationwide as by that point it was clear the relationship between Ms F and the merchant had broken down and Ms F didn’t have to deal with the merchant anyway as Nationwide was jointly and severally responsible for the claim.

I’m persuaded there has been a breach of contract here as I don’t think the boots were of satisfactory quality.

Ms F was paying a lot of money for the boots and they were custom fitted. I think she could have expected them to fit perfectly. The photographs suggest they didn’t as there are marks on Ms F’s daughter’s feet. Whilst the independent shoemaker hasn’t seen the boots I think their desk top appraisal gives more weight to the likelihood the shoes were not wide enough and won’t wear in. The retailer has suggested the process was rushed as there’d usually be

three fittings and not two. But I don't think it would be fair to suggest that was a reason for Ms F to accept boots that didn't fit.

Nationwide have explained they are happy to go back to the merchant and ask them to repair the boots. But they also said that if the merchant refused they would want to arrange an independent inspection before taking the claim any further. They didn't respond to our investigator's suggestion they arrange that inspection through Ms F.

Putting things right

I don't think an independent inspection is necessary here. I think we have enough information to suggest the boots are not of satisfactory quality and in those circumstances the relevant legislation (the Consumer Rights Act (2015)) allows the business an opportunity to repair the goods.

If that repair fails or, as it seems may be the case here, if the merchant refuses to repair the goods, I think the best solution would be for Nationwide to arrange to take the boots back (at their expense) and to refund the money Ms F spent on the boots adding 8% interest to the refund as Ms F has been deprived of the money. The relevant legislation allows them to retain some of that money in respect of the usage Ms F has had from the goods. That was clearly limited but I think a 5% deduction would be reasonable.

My final decision

For the reasons I've given above I uphold this complaint and tell Nationwide Building Society to:

- Liaise with the merchant and Ms F to arrange for the boots to be altered to fit at no cost to her.
- If the shoes are unable to be altered to fit, and this is evidenced either by confirmation from the merchant or an in-person inspection from an independent expert, Nationwide should in that scenario collect the boots at no cost to Ms F, and refund the cost of the boots minus a 5% deduction to take into account the limited use of the boots. The credit should be applied to Ms F's account and the interest recalculated as if the transaction didn't take place. If this puts Ms F's account in credit the balance should be refunded to her adding 8% simple interest from the date of transaction to the date of settlement.
- If the merchant refuses to carry out further alterations, Nationwide should collect the boots at no cost to Ms F, and refund the cost of the boots minus a 5% deduction to take into account the limited use of the boots. The credit should be applied to Ms F's account and the interest recalculated as if the transaction didn't take place. If this puts Ms F's account in credit the balance should be refunded to her adding 8% simple interest from the date of transaction to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 10 January 2023.

Phillip McMahon
Ombudsman