

The complaint

Mr D complains that Nationwide Building society ("Nationwide") will not refund a disputed transaction.

What happened

In December 2017 Mr D paid £999.98 for power meter pedals. In August 2019 Mr D started experiencing problems with the pedals. He got in touch with the manufacturer who asked him to return the pedals for repair/ replacement. Mr D says the pedals were returned to him in working order.

In June 2021 Mr D started experiencing issues with the pedals, he came across the manufacturer's service advisory, released in June 2018 which he said related to the problems he was having with the spindle nuts. Having attempted the fix outlined in the 2018 service advisory, he was able to tighten the spindle nut on the left pedal but was still experiencing problems with the right pedal.

He contacted the manufacturer again, this time it said the pedals were outside its 24-month warranty, so offered to resolve the issue at a cost of £117.27. Unhappy with having to pay this, Mr D got in touch with the supplier. The supplier said that due to the amount of time that had passed since his purchase, the manufacturer was responsible for the product.

Mr D contacted Nationwide in December 2021 to ask it for a refund under section 75 of the Consumer Credit Act 1974 (section 75). He said the pedals were not of satisfactory quality when they were sold to him. Nationwide contacted the supplier who said the goods had been replaced by the manufacturer and it wasn't liable for goods it didn't originally supply. Nationwide didn't think Mr D had a valid claim under section 75 as it said the supplier hadn't supplied the goods that were being complained about. It also said Mr D had not given the supplier an opportunity to offer a refund or repair in 2019, in accordance with the Consumer Rights Act 2015 (CRA), by going directly to the manufacturer.

Mr D complained to Nationwide about the outcome of his claim, he said the pedals had been repaired and not replaced, he didn't think it had considered the evidence provided or investigated his claim properly. Nationwide rejected his complaint, it maintained there wasn't a valid section 75 claim, in relation to the pedals.

Dissatisfied with the response, Mr D raised a complaint with our service. One of our investigators looked at the complaint. He didn't think Nationwide had taken the correct approach, as Mr D purchased the pedals from the supplier, and so his contract was with them. However, he said that even if Nationwide had correctly considered Mr D's claim, he didn't think Mr D had provided enough evidence to show the issue was due to an inherent manufacturing fault. Because of this he didn't think Mr D had lost out on anything due to Nationwide's handling of the claim.

Mr D disagreed, he said Nationwide's handling of the claim caused him unnecessary frustration and inconvenience, he also thought it should refund him the cost of replacement pedals he purchased for £550.

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.

Mr D has submitted extensive arguments and I wish to reassure him I have read these and given them due consideration. If I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. And our powers allow me to do this, and this simply reflects the informal nature of our service as a free alternative to the courts.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

Nationwide's approach to Mr D's section 75 claim

Nationwide said it had no liability to Mr D under section 75 because the manufacturer replaced the original pedals in 2019, so the supplier couldn't be held responsible for items it didn't supply. In addition, it said that by going directly to the manufacturer Mr D had deprived the supplier of its right to offer a repair or replacement in the first instance, so there could be no breach of contract. However, I don't think Mr D contacting the manufacturer for a remedy, deprives him of his rights against the supplier for a breach of contract. He contracted with the supplier for the pedals, which came along with the manufacturer's warranty. So, I don't think Mr D's actions automatically mean there can be no breach of contract.

Even if I was wrong about this, and were to accept Nationwide's argument, I'm not persuaded the pedals were replaced by the manufacturer. Nationwide relied on Mr D referring to *replacement pedals*, in some of his communications, but I can see the manufacturer offered a *repair or replacement* in its email dated 9 August 2019. And I haven't seen anything from the manufacturer to confirm it replaced the pedals in 2019 or any evidence to show the pedal serial numbers are different from those supplied in 2017. So, I don't think there is conclusive evidence to say the pedals were replaced in 2019.

Mr D says that if Nationwide handled his claim properly, he wouldn't have had the inconvenience of having to escalate the complaint. Mr D has provided lengthy complaint submissions, and I think it's more likely than not that even if Nationwide had correctly considered his section 75 claim, it's likely to have declined it (I'll explain why in the section below) and I think Mr D would have still escalated his complaint to this service. However, I do recognise that Mr D spent time calling and writing to Nationwide to try to get it to explain its approach to the claim and request that it review the evidence provided. So, I do think Nationwide's handling caused Mr D some frustration and inconvenience, in the circumstances I think Nationwide should pay Mr D £75 compensation to reflect this.

Section 75 claim

In summary, in some limited circumstances, Section 75 gives a consumer an equal claim against the provider of finance as they would have against the supplier of the goods or services about which the complaint is brought. It requires there to have been a misrepresentation or breach of contract by the supplier.

I think it's important to set out my role here. In considering a complaint about a financial service provider, I'm not deciding Nationwide's liability under Section 75- only a court can do that. Rather, I'm deciding whether Nationwide's decision to decline Mr D's claim without

considering his evidence about the faulty pedals, has meant he has lost out and if it has, how it should put things right. In doing so, I must take account of relevant law, amongst other things. Section 75 is relevant here, as is the CRA.

The CRA states that in order to conform to contract, goods must be of satisfactory quality when supplied. Satisfactory quality is defined as being what a reasonable person would consider to be satisfactory. The CRA also contains a presumption that where goods don't conform to contract within six months of the date of supply, that they didn't do so on supply.

As more than six months passed, when Mr D experienced issues it is for him to prove the fault was there at the point of supply. Mr D puts forward that the issue with the right spindle nut not tightening or being able to be removed, is linked to an identified inherent manufacturing fault outlined in a service advisory released in 2018. And on this basis the pedals could not have been of satisfactory quality when supplied.

The manufacturers' service advisory 2018 says

"is aware of an issue that may affect a small number of Vector™ 3 customers where

- *Spindle nut is under torqued and must be tightened before your next ride*
- *Cartridge is separated from the pedal body"*

Mr D hasn't suggested the cartridge is separating from the body of the pedal. And I note the service advisory only identifies an issue with the spindle nut not being fully tightened and goes on to give service instructions on how to tighten it. There is no reference made to a problem with the spindle nut spinning, not tightening, or not being able to be removed, as Mr D has detailed. So, whilst I appreciate Mr D believes the problem is related to the manufacturing spindle nut issue, I don't think this is clear.

Mr D is also of the view that the manufacturer's offer to rectify the problem without any quibble, supports that the issue is related to the identified problem with the spindle nut. And whilst I accept the manufacturer made no reference to wear or tear in response, but neither did it confirm the spindle nut spinning issue is related to a manufacturing problem.

I can also see that the pedals need to be disassembled and reassembled for routine maintenance/service, and whilst I accept Mr D has engineering qualifications, it's possible that a component may have become damaged, or the spindle nut tightened in the wrong direction of the thread during a service. And whilst I know Mr D doesn't agree, I think it's also plausible that the spinning of the spindle nut could be due to a component becoming worn. So, I'm not satisfied the fault relates to the identified manufacturing problem in the service advisory.

I've looked at the photographs provided by Mr D, but there's nothing there to evidence the problem relates to the manufacturing problem highlighted in the service advisory. I've also reviewed the comments from the online forum where other pedal users indicate they have also experienced issues with the spindle nut spinning. But I'm not persuaded the comments sufficiently demonstrate Mr D's pedals had an inherent manufacturing fault. I say this because the writers wouldn't have inspected Mr D's pedals or knowledge of their service/maintenance history.

Mr D told us the manufacturer did accept that the spinning spindle nut was a manufacturing fault. And I can see our investigator asked him to provide us with something from the manufacturer to confirm this or an independent inspection report, but he hasn't provided either. In the absence of any corroborating evidence, I'm not satisfied the problem Mr D experienced is due to a manufacturing fault.

I have considered carefully all that Mr D has said and produced. Having done so, I am not persuaded that the evidence presently available is sufficient to establish on balance, that there was a breach of contract by the supplier. So, I don't think it would be reasonable for me, based on the present evidence to direct Nationwide to reimburse Mr D for the replacement pedals he purchased or refund him for the cost of the pedals.

Mr D may now wish to get an independent report or confirmation from the manufacturer that the issue experienced relates to a manufacturing fault, for Nationwide's consideration. However, Nationwide may be able to use the Limitations Act 1980 to defend Mr D's claim if he doesn't bring it within six years from the date the cause of action accrued.

Putting things right

To put things right, I think it's fair for Nationwide to pay Mr D £75 compensation to reflect the frustration and inconvenience caused by its handling of his claim.

My final decision

My decision is I partly uphold this complaint and direct Nationwide Building Society to pay Mr D £75 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 February 2023.

Karen Dennis
Ombudsman