

The complaint

Mr C complains about a roof coating product he purchased, in part, using his Nationwide Building Society credit card. Mr C believes he was misled about the product and is unhappy that Nationwide has not upheld his claim under Section 75 (S75) of the Consumer Credit Act.

Mr C is represented in his complaint by a third party, but for ease I shall refer to all submissions from Mr C and his representative as if made by Mr C.

What happened

Around August 2010 Mr C purchased a roof coating product from a company that I'll refer to as T. The cost of supplying and applying the coating was £3,940 and Mr C paid £740 on his Nationwide credit card.

Mr C says that he was told the coating had various benefits, including insulating the house in the winter and keeping it cool in the summer. The product was to prevent the growth of moss and was to improve the appearance of the roof.

Mr C believes he was misled about the benefits of the coating product, as it does not provide the benefits that were claimed, and the coating is also peeling or flaking. The coating also came with a 10 year guarantee, which cannot now be fulfilled as T is no longer trading.

Mr C believes there is clear evidence of a breach of contract and misrepresentation by T and that Nationwide is responsible under S75. Mr C would like the cost of the product refunded to him, along with interest.

Nationwide considered Mr C's claim but did not uphold it. It explained that as the product was purchased in 2010 but Mr C's claim was not made until more than 6 years after this point, it had no liability under S75. Despite further correspondence, Nationwide did not change its position and Mr C then referred his complaint to our service.

The complaint was considered by one of our investigators, who amongst other things referred to S75 and the Limitation Act 1980. They explained that when considering how Nationwide had dealt with Mr C's S75 claim, the Limitation Act 1980 was relevant and any like claim that Mr C had under S75 against Nationwide had been brought too late. This is because there is a period of 6 years from the time of the sale for Mr C to bring his claim and as he had not done this, the claim had been made too late. It was not therefore unreasonable for Nationwide to decline Mr C's S75 claim.

Mr C did not accept the investigator's findings and explained that in relation to the guarantee, which is no longer available, the limitations time period would start from when the guarantee ceased to be available, rather than the time of the original sale. The investigator reconsidered this and accepted that the limitations time period in relation to the guarantee would start when the guarantee was no longer available and Mr C was unable to claim on it. As this was within 6 years of Mr C making his S75 claim, this part of the complaint was therefore made in time.

The investigator then went on to explain that despite the claim being made within time, they did not consider there were sufficient grounds for it to succeed. They noted that although the guarantee would cover the coating if it was peeling or flaking, the remedy would be to reapply the coating. But as it has been accepted the coating had no benefit it would not be reasonable to reapply the coating.

The investigator explained that a successful claim under the guarantee would not have provided Mr C with a refund of the product costs but they did consider whether there were any alternative remedies that would be appropriate in this instance. They considered whether it would be appropriate for Nationwide to cover the cost of a replacement roof, but felt this was a disproportionate remedy in the circumstances. While accepting there had been a breach of contract, they did not consider Nationwide should be required to do anything more.

Mr C believes Nationwide would be liable under the guarantee for the costs of repainting the roof, albeit not with the same coating. The investigator did not however consider Nationwide was responsible for painting the roof under the terms of the failed guarantee, as the guarantee only provides for the coating product to be reapplied.

As the complaint could not be resolved informally, it was referred to me for consideration. On 6 March 2023 I issued a provisional decision, a summary of that decision and the reasons behind it are as follows:

What I've provisionally 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. 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.

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 S75. Rather, in deciding what's a fair way to resolve Mr C's complaint, I've taken S75 into account.

But that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mr C pursued a claim for misrepresentation and or breach of contract. This service is not a court but an alternative to the courts. Mr C's complaint is essentially that Nationwide hasn't properly exercised its duties under the finance agreement it had with him. Specifically, its duties under S75, which says: "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, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."

Nationwide's stance is that any claim Mr C had against T is now time barred due to the Limitation Act 1980. Specifically, it relies on those provisions that say a cause of action, of the types complained about here, shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Mr C's issues relate to an alleged breach of contract and misrepresentation by T. The misrepresentation relates to what Mr C was told about the benefits of the product at the time he agreed to proceed with the work. In summary, that the roof coating would provide thermal benefits and help the house retain heat in the winter and help reflect the heat in the summer, keeping the house cool. The coating would also prevent the growth of moss and lichen and improve the aesthetic appearance of the roof.

Mr C met with a representative of T and was told about the product around August 2010, just before it was applied. I'm satisfied that the cause of action, in relation to the alleged misrepresentation, relates to those events in 2010 and that for Mr C to be able to claim under S75 any claim would need to be made within 6 years. I've not been presented with any evidence to show that Mr C did actually bring a claim within 6 years of 2010 and it appears the earliest any claim was raised was in October 2017, which is more than 6 years later.

When considering whether Mr C has a valid claim under S75, I'm satisfied it was reasonable for Nationwide to also consider the Limitations Act 1980 to decide whether the claim was raised in time. And having considered the implications of the Limitations Act 1980 I don't consider Nationwide acted unreasonably when deciding Mr C's claim for misrepresentation had been raised too late. It is likely that any 'like claim' in court would also be considered to have been made out of time, in relation to the misrepresentation.

Mr C also considers there to have been a breach of contract on the part of T as it has been dissolved and is no longer in a position to honour the 10 year guarantee that was provided with the roof coating. The guarantee certificate for Mr C's property refers to an installation date of August 2010 and 'All coating is guaranteed for a period of 10 years from date of installation'. The product brochure also refers to the product being covered by a 10 year guarantee. The terms and conditions refer to:

'On receipt of full payment for the work contracted, all protective coating applied by the company are guaranteed for a period of 10 years for the following:

- Coating flaking or peeling.*
- Coating discoloration...'*

Having reviewed the product literature I'm satisfied that in addition to supplying and applying the roof coating, it was provided with a 10 year guarantee that would cover the coating flaking, peeling or discolouring. Should Mr C's product therefore show signs of flaking, peeling or discolouration, the guarantee should address this and rectify any issues. Mr C has provided photos of what I understand to be his roof and that show signs of the coating flaking and peeling. The photos do not show the whole roof area, but I don't believe this is necessary as it is clear that some parts of the roof are affected by the peeling and flaking. Having considered the terms of the guarantee and the condition of Mr C's roof I am satisfied that Mr C would have reasonable grounds to claim on the guarantee to address the flaking and peeling. T was however dissolved in September 2020 and I understand it had stopped trading some time prior to that. Mr C's S75 claim against Nationwide was initially raised in October 2017 and I understand by that time T was no longer trading or willing/able to fulfil its obligations under the guarantee. As the guarantee cannot be fulfilled I'm satisfied that there has been a breach of contract on the part of T. And that consequently, Mr C has a like claim for that breach of contract against Nationwide through S75.

I have therefore considered what, if any, redress would be appropriate in the specific circumstances of this case. I would again remind the parties that any redress would be solely in relation to the breach of contract through not being able to fulfil the requirements of the guarantee and not for the alleged misrepresentation which I have not considered.

Typical redress in the case of a breach of contract would be to remedy the breach that has occurred. In this instance however, I don't believe it would be possible to reapply the roof coating in the same colour as the exact product that was applied is unlikely to be available. While I understand it is accepted by all parties, it is again worth stating that applying the same coating to achieve the claimed benefits is unlikely to be worthwhile, as it is generally accepted the product does not provide the insulating or cooling benefits originally claimed. But I do consider Mr C has lost out and I have considered what alternative remedies would be reasonable and proportionate in the specific circumstances of his case.

Replacing the entire roof tiles would ensure that the aesthetic appearance of the roof was restored, and all tiles would be of similar appearance. This would however be at considerable cost and would not be a proportionate remedy for the specific circumstances of this case in my view.

Mr C initially argued that he should be entitled to a full refund of the £3,940 he paid for the coating, but this was in relation to both the breach of contract and misrepresentation. Refunding the entire sum would be disproportionate in my view, as Mr C has benefitted from some years of a more aesthetically pleasing roof.

Subsequent discussions relating to redress in relation to the breach of contract only resulted in Mr C arguing that he should be entitled to the equivalent costs of repainting the entire roof. This would ensure that the roof would be evenly painted and avoid patchy areas of discolouration caused by touching up the flaking or peeling areas.

The guarantee provided with the product essentially gave Mr C an assurance that he would have an aesthetically pleasing roof for a minimum of 10 years. I have not seen any evidence to indicate that Mr C was unhappy with the appearance of the roof immediately after the application of the coating. It is also not entirely clear when Mr C's roof initially started to peel or flake. In the absence of any supporting evidence to show exactly when Mr C's roof started to peel and flake, or that he had previous engagement with T in an attempt to claim under the guarantee, I think it is reasonable to take the date that Mr C appointed his representative as an indication of any claim that would be submitted. Mr C signed an authority for his representative to act on his behalf on 25 September 2017 and it is likely that some discussions took place prior to that date. It is therefore reasonable in my view to assume the 1st September 2017 was around when Mr C would have initially tried to claim under the guarantee because of the flaking or peeling coating.

Mr C has therefore arguably had approximately 7 years from the application date of August 2010 where the appearance of the roof was as expected and in an aesthetically pleasing state. I do not consider a fair and proportionate remedy in this instance would be to repaint the entire roof. Scaffolding would need to be installed to safely work on the roof, the tiles would need to be prepared and then at least two coats of paint would need to be applied to ensure a reasonable job was done. Although no quotes for the cost of the work have been presented, I think it's reasonable to assume that the costs would not be too dissimilar to the £3,940 Mr C initially paid.

Although I do not consider repainting the roof would be reasonable, I do consider it fair for Mr C to be compensated for the premature deterioration of the product and the reduced period that the roof was looking aesthetically pleasing. As referred to above, Mr C should

have been provided with an attractive and well-presented roof that was free from peeling, flaking and discolouration for at least a period of 10 years. That has not happened and at most, Mr C has had approximately 7 years of the product improving the appearance of his roof. I appreciate not all of the roof is necessarily showing signs of flaking and peeling but the appearance of the roof will none the less be compromised and reduced, even with the patchy areas of flaking and peeling. And this is why I consider it reasonable to compensate Mr C for the overall appearance of the roof, rather than for the proportion of the roof that is flaking or peeling.

Having considered the specific circumstances here I consider that fair compensation would be for Mr C to receive a refund of the product cost proportionate to the length of time the roof appearance had deteriorated during the guaranteed 10 year period. That amounts to 3 years in this instance and Mr C should therefore receive an amount equivalent to 30% of the product cost. That amounts to £1,182.

As Mr C has been deprived of this money, interest at 8% simple per year should be added to this amount. Had Nationwide fairly dealt with Mr C's claim and awarded the £1,182 Mr C would have received the £1,182 at the time Nationwide responded to Mr C's claim on 21 November 2017. As Mr C has been deprived of the £1,182 since 21 November 2017, interest should be calculated from this date until the date of settlement.

My provisional decision

My provisional decision is that I uphold this complaint in part and I now invite any final submissions from the parties before I issue my final decision.

Mr C responded to my provisional decision to say that he was happy with it. Nationwide responded and said that to draw a line under this, it was willing to compensate £1,182 and apply interest to this sum from 21 November 2017. It also said that upon receipt of Mr C's acceptance of the decision the redress will be credited to his credit card account within 4 weeks.

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.

Having reconsidered all of the previous submissions and in the absence of anything new from either party in this complaint, I have come to the same overall conclusions as set out in my provisional decision for broadly the same reasons.

In Nationwide's response it said that it would apply the redress to Mr C's credit card account once Mr C has accepted the decision. Nationwide has not referred to the outstanding balance on Mr C's credit card or whether this balance solely relates to the £740 and or associated interest that relates to the original payment for the roof coating. Considering the transaction here took place in 2010, I consider it unlikely that any outstanding balance on Mr C's credit card relates to the original transaction. For this reason, I do not consider it reasonable for Nationwide to apply the redress to Mr C's credit card account. Nationwide should make the payment directly to Mr C and not to his credit card account.

Putting things right

Nationwide should pay Mr C, directly and not to his credit card account, £1,182 plus interest at 8% simple per year from 21 November 2017 until the date of settlement.

My final decision

My final decision is that I uphold Mr C's complaint and direct Nationwide Building Society to settle the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 April 2023.

Mark Hollands
Ombudsman