

The complaint

Mr B complains that Nationwide Building Society (“NBS”) unfairly declined his claim under the Consumer Credit Act 1974 (“CCA”) in relation to the purchase of a holiday product he paid for using his credit card.

What happened

In or around November 2021, Mr B (jointly with another party) agreed to purchase a holiday product from a supplier – who I’ll refer to as “D”. The purchase price agreed was €2,808.00 which was funded using a credit card provided by NBS in Mr B’s sole name.

In May 2022, Mr B submitted a claim to NBS under Section 75 of the CCA (“S75”). Mr B said D had misrepresented the product to him. And it was those misrepresentations that persuaded him to agree to the purchase. He also said that D had breached the associated contract. Mr B held NBS jointly liable for the misrepresentation and breach of contract under S75. The allegations presented were numerous, so I don’t propose to list them in full in my decision. However, they can briefly be summarised as follows:

- the accommodation agreed in the contract for the first included week’s holiday was cancelled and replaced with alternative accommodation;
- the contract listed 17 “VIP” hotels, but these were reduced to only three;
- S knew accommodation included in the contract wasn’t available, or wasn’t likely to be available in the future;
- Mr B was told bookings through D would be cheaper than he could arrange himself;
- D were unable to provide accommodation at a destination of his choice for the further weeks included in his contract; and
- accommodation presented in brochures wasn’t available for Mr B to book.

Having considered Mr B’s claim, NBS didn’t uphold it. They thought the purchase contract made it clear that all bookings were subject to availability with no assurances given of any specific accommodation at any given time. They also hadn’t seen any evidence to support Mr B’s assertion that D had told him the product purchased was a cheaper way to book accommodation.

Unhappy with NBS’s response to his claim, Mr B pursued matters further, providing NBS with further evidence and recollections of conversations that he thought were relevant to his claim. Mr B also challenged much of NBS’s interpretation of what constituted misrepresentation and breach of contract together with their interpretation of accommodation being “*subject to availability*”.

NBS considered Mr B’s further submissions as a complaint about the claim findings. In response, they didn’t agree they’d made a mistake.

Unhappy with NBS’s response, Mr B referred his complaint to this service. Throughout the course of this service’s investigations, Mr B continued to provide further emails and correspondence together with detailed explanations of why he thought NBS hadn’t properly considered his claim.

One of this service's investigators considered everything that had been said and provided, liaising with various parties to ascertain what had happened. Having done so, they didn't agree there was sufficient evidence to demonstrate that D had misrepresented the product purchased in the manner alleged. Or that there was evidence to suggest there'd been a breach of contract. Our investigator didn't think NBS needed to do anything more.

Mr B didn't agree with our investigator's findings. He provided further detailed and lengthy explanations in support of his complaint, together with further copies of emails, correspondence and documentation.

As an informal resolutions couldn't be achieved, Mr B's complaint was passed to me to consider further.

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.

Relevant Considerations

When considering what's fair and reasonable, DISP¹ 3.6.4R of the Financial Conduct Authority ("FCA") Handbook means I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time.

S75 provides protection for consumers for goods or services bought using credit. Mr B paid, for his purchase with a credit card issued by NBS. So, it isn't in dispute that S75 applies here. This means that Mr B would be afforded the protection offered to borrowers like him under those provisions. And as a result, I've taken this section into account when deciding what's fair in the circumstances of this case.

It's important to stress that this service's role as an Alternative Dispute Resolution Service ("ADR") is to provide mediation in the event of a dispute. The complaint being considered here specifically relates to whether I believe NBS's treatment of Mr B's claim was fair and reasonable given all the evidence and information available. This service is not afforded powers to decide a legal claim. While the decision of an ombudsman can be legally binding, if accepted by the consumer, we do not provide a legal service.

Where evidence is incomplete, inconclusive, incongruent or contradictory, my decision is made on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the evidence that's available from the time and the wider circumstances. In doing so, my role isn't necessarily to address, in my decision, every single point that's been made. And for that reason, I'm only going to refer to what I believe are the most salient points having considered everything that's been said and provided.

In short, the purchase contract I've seen shows that Mr B was entitled to three weeks accommodation to be taken within the contractual period of 11 months. The first one-week booking was included and the associated accommodation specified within the contract. The subsequent two weeks were subject to Mr B making the bookings with D.

Misrepresentation (S75)

For me to conclude there was a misrepresentation by D in the way that has been alleged, generally speaking, I would need to be satisfied, based on the available evidence, that D made false statements of fact when presenting and selling the product purchased to Mr B in 2021. In other words, that they told Mr B something that wasn't true in relation to one or more of any points raised. I would also need to be satisfied that these misrepresentations

¹ Dispute Resolution: The Complaints sourcebook (DISP)

were material in inducing Mr B to enter the contract. This means I would need to be persuaded that Mr B reasonably relied upon any false statements when deciding to complete his purchase.

Allegations have been made specifically relating to the purchase referenced above. The difficulty I have is identifying what Mr B was (or was not) told at the time of the sale. Mr B agreed to purchase the product in November 2021. So, in considering his complaint, I've considered the information available to him from that time, as this was the point he made his decision to proceed based upon the representations made by D.

I've considered the contract Mr B entered into. Although not determinative of the matter, I've not seen any other specific evidence from the time of the sale, such as marketing material or any other related documentation. Having considered that, I haven't seen anything that supports Mr B's allegation that he was told the product would secure holiday accommodation any cheaper than could be achieved elsewhere. There's simply no reference to that in the contract. So, I can't reasonably conclude that D misrepresented the purchase in the manner alleged.

Much of Mr B's claim centres upon the availability of accommodation (or lack of). Particularly relating to accommodation that he alleges D told him he could access. Mr B has gone to great lengths to explain why he believes this was misrepresented. Not least as it appears much of the accommodation listed within the contract wasn't available to him, both at the time of the sale and thereafter.

The contract states that Mr B *"acquires the right to book and use tourist accommodation that the provider offers in certain resorts"*. It further states; *"The remaining 2 weeks can be selected from the accommodation offered by the provider"*. The contract goes on to include *"The current list of VIP resorts (first booking) [...]"*. So, I think it's clear that the resorts in the list weren't necessarily available for subsequent bookings of the second and third week included in Mr B's contract. In reality, the contract makes no reference to any specific accommodation (or locations) available for subsequent bookings under the product purchased.

During the course of our investigations, Mr B has referenced various brochures he alleges he was shown during the product presentation and sale. It's alleged these brochures illustrated various holiday accommodations worldwide that he says he was told he could access. But Mr B says he's not been able to do that. In fact, he says that D have only been able to offer him accommodation at one particular property/destination. I've not seen any of the brochures referred to and I understand Mr B doesn't have these available. So, I can't reasonably say what was actually presented to Mr B with any certainty. And because of that, I can't reasonably conclude that D did misrepresent the available accommodation to Mr B in the manner alleged. The contract only refers to *"accommodation offered by the provider"* with no specifics mentioned.

Mr B says that the accommodation booking for his first week (specified in his contract) was cancelled by D. However, it appears he did accept alternative accommodation. So, it doesn't appear Mr B suffered any related financial loss here that could be considered under his claim. And in any event, Mr B has been clear that he only seeks reimbursement for the second and third weeks, which he says he's been unable to book. But as I haven't found any conclusive evidence of what was presented to him, I can't reasonably say that NBS are likely to have a liability under S75.

Breach of contract

A breach of contract occurs when one or more parties to a contract fails to perform their duties and/or obligations under the agreement or abide by the terms and conditions of the contract.

I accept that Mr B's first week accommodation booking was cancelled by D. However, Mr B did accept an alternative. And in doing so, it appears D fulfilled their obligation. And ultimately, because of this, I can't say that Mr B suffered financial loss such that NBS should be held liable for that under S75.

My findings above confirm that I've seen no supporting evidence to suggest D gave any guarantees about the accommodation (or locations) that Mr B would have access to. Only that he could choose from "*accommodation offered by the provider*". It appears that D did offer Mr B accommodation which, unfortunately, wasn't acceptable to him. But because there's nothing within the contract to specify the extent of the accommodation available, I can't reasonably say this constitutes a breach of contract.

Further, the contract clearly states in at least five places that bookings are subject to availability. Mr B asserts that the contract defines that as "*limited exclusively due to the usage by other guests*". The contract certainly includes that phrase albeit I don't consider this to be an all-encompassing definition. Availability can be impacted by any number of issues, including the specific accommodation that D includes in its portfolio. Clearly if a particular property is closed, it's unavailable. And if it's a property that D don't include in their portfolio, that also would be unavailable. I realise Mr B may disagree, but I don't think it'd be appropriate to accept a definition of availability as simply as he suggests.

Summary

I'm mindful that Mr B has provided considerable information and comments in support of his claim. And as I've already said above, while I may not have made reference to everything submitted, I would like to reassure him that I've carefully considered everything he's said and provided.

It's clear Mr B feels very strongly that his claim should be upheld. Having considered everything, and for the reasons mentioned above, I can't say that NBS's response to his claim was unfair or unreasonable based upon the available information. I realise Mr B will be very disappointed. But I won't be asking NBS to do anything more here.

My final decision

For the reasons set out above, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 February 2024.

Dave Morgan
Ombudsman