

The complaint

Mr N complains that Nationwide Building Society has treated him unfairly in relation to a transaction on his credit card which partially paid for a used car.

What happened

In November 2022 Mr N used his Nationwide Building Society (NBS for short) credit card to pay a deposit (£500) and a warranty (£635) for the car he was purchasing. He also part exchanged his old car to make up the total cost of his new used car which cost £21,000. The purchase of the car was made over the phone with Mr N not seeing the car until it was delivered to him on 25 November 2022. Mr N then sent the car supplier an email on 07 December 2022 which included the following wording *"I have noticed a number of things wrong with it hence the reason for deciding to return it for a full refund within the 14 days distance selling regulations period."*

Mr N goes on to list issues with the car and give his bank details for the refund and suggest times for collection of the car. The supplier responded by email explaining that this car sale wasn't covered by the distance selling regulations due to this type of sale not being its primary type of business. The suppliers also contest Mr N's list of issues with the car and maintain it is of satisfactory quality for such a used car. Reaching stalemate with the supplier Mr N took his complaint to NBS.

NBS looked into the matter and said the supplier wasn't willing to accept return of the car. After a significant amount of back and forth between NBS and Mr N, NBS credited Mr N a total of £4136.86 which he paid to repair the issues with the car. But Mr N feels that he was still left with a car he didn't want. So he brought his complaint to this service.

Our Investigator felt NBS didn't have to do anymore with regard to the car. But felt it had caused unnecessary distress and inconvenience, so suggested that NBS pay a further £250 on top of the £50 NBS had already paid Mr N.

NBS accepted the proposal of our Investigator, but Mr N did not. Mr N has since informed this service that he sold the car in February 2024. He says he sold it for £16490 and thus wants NBS to pay him the £5145 he says he's lost through the difference of the amount he paid originally and the amount he sold it for. Clearly Mr N remains unhappy and so this complaint comes to me for a 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 should make very clear that this decision is not about the car supplier, who isn't a financial services provider and doesn't fall within my remit regarding the chargeback scheme relevant here or Section 75 of the Consumer Credit Act 1974 ('s75' and 'CCA' for short). Whatever the issues there maybe with the supplier and just because Mr N says he has lost out here, it

doesn't necessarily follow that NBS has treated Mr N unfairly or that it should refund him. And this decision is solely about how NBS treated Mr N.

chargeback

All card issuers such as NBS operate their cards within card networks. These card networks operate their own dispute resolution processes for disputes between card holders and merchants called chargeback. The process is based solely on the rules of the network and allow card issuers a process for such disputes to be resolved. If the merchant and the card issuer cannot come to an agreement at the end of the process then the network itself decides the outcome of the dispute.

Mr N doesn't dispute that he made the transaction on his credit card or that it was improperly or incorrectly applied to his account. So I don't think NBS could have raised a chargeback on these grounds. NBS raised a chargeback on each of the two transactions Mr N had with the car supplier. Both transactions were refunded in full to Mr N. Mr N says the extended warranty shouldn't have been disputed. However he received a full refund and has since sold the car, so I'm not persuaded he's lost out as a result of this.

The CCA

Section 75 says, in essence, that as long as certain qualifying criteria are met then NBS can be held to a 'like claim' as to that which Mr N has against the supplier. I am satisfied that the qualifying criteria are met here (financial limits and the DCS agreement) which then means NBS has to consider whether the suppliers misrepresented the sale to him or whether it breached the contract between them (or both). And if the suppliers did those things (breach or misrepresentation) whether there is anything to be done by NBS to remedy that.

Mr N's main argument here is that he had a fourteen day cooling off period in which he had the option of returning the car for any reason and would thus receive a refund. And he argues he sought to exercise that option and wasn't allowed to, and accordingly he argues under S75 NBS should be responsible for the 'like claim' and thus it should have allowed him to reject the car.

Mr N doesn't specifically quote 'chapter and verse' (as it were) of the legislation he seeks to rely upon. However it's likely he's referring to the 14-day right to cancel as set out in the Consumer Contracts (Information, Cancellation and Additional Charges Regulations 2013 (the "CCR's"). Where the CCR's apply they afford consumers extra protections to any that may be in the actual sales contract agreed. And for the 14-day cancellation right to apply under the Consumer Contracts Regulations certain conditions must be met.

Here these CCR's (or distant selling regulations as Mr N refers to) do not apply to this sale. Mr N says he's talked to a solicitor about this and is sure he's correct that they do apply. However the supplier is correct in that they don't apply. As the supplier said in his email to Mr N selling over the phone wasn't its primary type of business. I've looked at the supplier's website from the time (and recently) and it is clear its primary selling process is by customers booking an appointment and then visiting its site and inspecting the car they want and making the purchase at the supplier's premises. The relevant part of the CCR's is the definition of a 'distance contract' (in part one section five):

"distance contract" means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;"

Clearly as the supplier has stated directly to Mr N the process under which this purchase was made wasn't its primary sales process (i.e. visit the showroom) and according then this contract wasn't under an '*organised distance sales scheme*.' It is also clear that were this contract to be covered by these distance selling regulations there are information provisions and document provisions requirements placed on the supplier to be provided to the purchaser before entering such a contract (section 13 for example). This didn't happen, so along with the supplier's comments on the matter and the evidence available to me and for the reasons given, I'm satisfied this wasn't a distance contract. So I'm satisfied on balance that Mr N didn't have a fourteen day right to reject.

All consumers including Mr N have, under the Consumer Rights Act 2015 (CRA), the short term right to reject if a car is of unsatisfactory quality. Other relevant remedies available under the CRA are repair and price reduction. Here the supplier made clear it didn't accept that the issues Mr N pointed to made the car of unsatisfactory quality. So Mr N took the car to a representative of the manufacturer who said there were issues with the car which needed repair. NBS paid Mr N the total amount needed for those repairs and the repairs were conducted.

Mr N says he wanted to reject the car which is clearly no longer possible as he's sold it. Furthermore Mr N clearly did accept repair as a fair solution to the matter and NBS did pay for this. I appreciate that Mr N says he felt that he didn't have a choice here. But he did accept repair and as he's now sold the car there is no longer the option of rejecting the car, albeit I'm not persuaded that it would have been necessarily a fair remedy now considering all the circumstances of this dispute.

It's also clear that NBS were amenable to covering the cost of the repairs once it got to grips with the matter. It should also be noted that just because this car had issues requiring remedy that does not necessarily equate to a finding of this car being of 'unsatisfactory quality' as per the test for this which is set out in the CRA. This was a used car of significant age and mileage when Mr N bought it. Just because Mr N felt that it was unsatisfactory quality this doesn't equate with the detailed considerations set out in the CRA for what is actually of unsatisfactory quality. And clearly the supplier contested that it was satisfactory. Nevertheless NBS accepted it was unsatisfactory quality and paid and the car was repaired (and later sold). So I'm not persuaded that Mr N lost out here because of the way NBS treated him.

Mr N points to costs he says are consequential losses of the issues with the car such as insurance, depreciation, and tax. I do not agree these are consequences of any breach here. They are consequences of owning such a car (which Mr N has accepted was liable to depreciate) and the legal requirements to own such a car. And any depreciation is a natural occurrence due to the ageing and treatment of this car (and indeed to all cars to greater or lesser extents).

Mr N says he wants NBS to pay for the difference between the price he paid for the car and the amount he received when he sold it. But he sold it at the price he sold it at and the decision to sell and the decision to sell at that price are decisions that sit solely with Mr N. The car had been repaired in line with the issues identified. So NBS' liability ended there. It is not responsible for either any natural depreciation in the car nor Mr N's decision to sell at that particular price.

Mr N points to NBS asking him to have the car valued. NBS is entitled to consider the matter as a whole when it's considering the s75 claim before it. On many occasions repairs can be more costly than the value of the car itself. So I can understand why it would want this information in its decision making. But ultimately Mr N accepted repair and I think that's a fair solution in the circumstances.

Mr N makes arguments about if NBS had offered him reject right at the beginning, rather than repair sometime afterward then he'd be financially better off if he'd been offered reject than he did under repair. This maybe the case but it does not follow that means that NBS has treated him unfairly. NBS is obliged to consider his s75 claim fairly. It clearly accepted the faults were present and paid for their remedy. Just because there was other remedies available it doesn't necessarily mean by choosing the remedy it did choose that was an unfair choice for it to make. And Mr N did clearly accept it and the records show this to be the case.

I appreciate Mr N is very disappointed with the whole affair here and I can well understand this. However this decision is solely about how NBS considered the matter under its obligations it has in such situations. It is not responsible for the customer service the car supplier provided, nor is at fault for Mr N receiving a car he was unhappy with. Nor is it responsible for the time taken by the representative of the manufacturers, the late identification of the oil issues or the time taken whilst all the parties were going back and forth between each other. NBS is solely responsible for fulfilling its obligations which to my mind is only a part of the broader circumstances with which Mr N is understandably unhappy.

Putting things right

Nevertheless it cannot be said that NBS acted anywhere near as quickly as it can and I'm sure on reflection it concurred with the investigator's finding of unreasonable delay on its part. And hence its acceptance of her recommendation of a further £250 to be paid to Mr N to reflect the customer service it provided here. Having considered the circumstances here I think this is a fair reflection of the distress and inconvenience which NBS is responsible for and was suffered here.

So, all in all, having considered the matter and everything Mr N has said, it is my decision that this complaint should be upheld and NBS pay Mr N £250 to end this dispute (if it hasn't already).

My final decision

It is my decision that this complaint about Nationwide Building Society should be upheld and it must pay Mr N £250 (if it hasn't already). Once that is paid it has nothing further to do on this dispute.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 6 September 2024.

Rod Glyn-Thomas
Ombudsman