

The complaint

Mr S complains that Nationwide Building Society has incorrectly remedied his dispute with a merchant over some headphones.

What happened

In June 2023 Mr S used his Nationwide Building Society (NBS for short) credit card to pay £229 to a merchant for some headphones with a recommended retail price of £380. The headphones weren't delivered so he asked the merchant for a refund which wasn't forthcoming. So he complained to NBS. NBS raised a chargeback and Mr S was credited £229 as a result. NBS paid Mr S a further £75 to reflect some customer services issues. But Mr S felt this was unfair so he brought his complaint to this service. Our investigator looked into the matter and concluded NBS had treated Mr S fairly. Mr S didn't agree. So the complaint has been passed to me to decide.

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.

The facts surrounding the headphones aren't in dispute. The only issue for me to decide upon is whether the remedy Mr S received was fair. Mr S says he asked for a claim to be made under Section 75 of the Consumer Credit Act 1974 and that NBS didn't do that. He also argues that under a s75 a like claim means he can rely on s51(3) of the Sale of Goods Act 1979 and he says this means he should receive the recommended retail price (£380) and not the £229 paid. So he wants the difference between those amounts along with £150 distress and inconvenience for the customer service received. I think Mr S has been fairly treated for the following reasons.

NBS is not obliged to pursue either Chargeback or Section 75 at the complainant's direction but to consider the complainant's dispute with the merchant fairly. Similarly it is not obliged to treat a complaint how the complainant wishes it to be considered but to treat it fairly too. It has raised a chargeback and Mr S has been fully refunded. I'm not persuaded he's lost out as a result of this for the following reasons.

I don't agree that s51(3) of the Sale of Goods Act 1979 obliges NBS to pay Mr S the recommended retail price which Mr S says is £380. It gives "*prima facie*" (which is a Latin term meaning 'at first sight') direction as to how damages are to be ascertained. What Mr S hasn't mentioned is that s51(2) of the same Act says "*The measure of damages is the estimated loss (my emphasis) directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.*" So clearly s51 (2) gives important context to establishing damages for loss and which gives important context to s51(3). Here Mr S hasn't suffered a loss because he's been fully refunded by the successful chargeback to the Merchant. So I disagree with Mr S analysis of the law here and the application of it to his case.

In any event the Sale of Goods Act 1979 also says under s51(s4) (a subsequent amendment to the original Act) “*This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies*”. I’m satisfied that the Consumer Rights Act 2015 (CRA) does apply here so Mr S is pointing to the wrong legislation (albeit this has little impact in the overall result in his case).

The remedy for breaches in relation to the provision of goods under the CRA include repair, replace or price reduction. As Mr S has received a full refund by means of the successful chargeback to the Merchant, he has had, in essence, a 100% price reduction. Which is a fair remedy here.

Section 75 of the Consumer Credit Act 1974 says he has a ‘like claim’ to that he’d have against the Merchant in this case. NBS has a duty to treat his claim fairly, but as it’s a ‘like claim’ there is also a requirement for Mr S to make out his claim as he would have to against the merchant. And I’ve seen no persuasive evidence of consequential losses over and above the price he paid for the headphones being demonstrated by Mr S. So I’m not persuaded NBS has to do any more. So either way Mr S hasn’t lost out because he’s not demonstrated that he’s suffered a loss which hasn’t to date been remedied and thus I think NBS has treated him fairly.

Lastly I should add, that as an Ombudsman at this service I am obliged to consider the law but I’m not bound by it. I have the power to decide what is fair and reasonable and can depart from the law if I conclude that would be fair to do so in a particular complaint. So even if Mr S’ arguments were persuasive regarding what the law says (which they aren’t to my mind) I’d be likely to use my discretion to decide he’d been treated fairly in any event.

I think the £75 awarded in relation to customer service fairly reflects the situation. So NBS doesn’t have to do more on that issue. I do appreciate that this isn’t the decision Mr S wants to read. But NBS has treated him fairly.

My final decision

For the reasons set out above, I do not uphold the complaint against Nationwide Building Society. It has nothing further to do here.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 9 May 2024.

Rod Glyn-Thomas
Ombudsman