

The complaint

Miss Y complains that Nationwide Building Society rejected her claim under section 75 Consumer Credit Act 1974 in respect of a timeshare product.

What happened

On 19 September 2023 ('the Time of Sale') while on holiday abroad Miss Y and her partner attended a presentation by a timeshare company ('the Supplier'). They agreed to purchase a product which purported to offer accommodation at a discount. This cost \$10,650 and a deposit of \$3,195 (£2,583.70) was made using Miss Y's Nationwide credit card. The balance was to be paid by finance arranged by the Supplier. I understand no payment has been made other than the deposit. There was also an annual fee of \$250. According to a document headed 'Affiliation Request' the product was valid for 15 years and offered 20 weeks at a discount of 25%.

Access to the discounts was to be via an online platform which was due to be made available after 15 days from when the sale was 'processable and active'. The login details were provided on 13 October 2023.

Miss Y complained to the Supplier on 14 October 2023 and on 16 October 2023 she contacted Nationwide to dispute the transaction. When she had not received a response she contacted Nationwide again on 11 December 2023. It responded on 22 December asking for further information.

Nationwide made contact with the Supplier which rejected the claim and it notified Miss Y that her claim had been unsuccessful. She complained and Nationwide offered her £50 for the delay in responding to her initial contact.

Miss Y brought a complaint to this service where it was considered by one of our investigators. Initially he thought it should be rejected, but on receipt of further representations he concluded that the complaint should be upheld.

Nationwide didn't agree and so the matter has been referred to me.

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.

And having done that, I think this complaint should be upheld.

But before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

What is more, I have made my decision on the balance of probabilities – which means I have based it on what I think is more likely than not to have happened given the available

evidence and the wider circumstances.

The CCA introduced a regime of connected lender liability under section 75 that affords consumers (“debtors”) a right of recourse against lenders that provide the finance for the acquisition of goods or services from third-party merchants (“suppliers”) in the event that there is an actionable misrepresentation and/or breach of contract by the supplier.

In short, a claim against the Lender under section 75 essentially mirrors the claim Miss Y could make against the Supplier.

Certain conditions must be met if the protection afforded to consumers is engaged, including, for instance, the cash price of the purchase and the nature of the arrangements between the parties involved in the transaction. The Lender does not dispute that the relevant conditions are met in this complaint and I’m satisfied that Section 75 applies to the purchase in September 2023. If I find that the Supplier is liable for having misrepresented something to Miss Y at the Time of Sale, the Lender is also liable.

Miss Y has explained that the website she was shown was not the same as the one she later was given access to so that she could make bookings at the discounted rate. She has said that the rates shown were not discounted as promised. Regrettably she is no longer able to access the site and so she is unable to demonstrate that. However, I think she may well have been able to do so when she first contacted Nationwide and I fear its delays have not been terribly helpful.

The Supplier was slow to let Miss Y have the login details to the website and when it did she says she found that it was not as she had been led to believe. She emailed the Supplier on 14 October 2023, a day after the login was provided, asking for a refund and then sent a reminder on 23 October. The Supplier responded to say that she could only cancel with five days of signing the contract. That means she was not able to cancel when she received the product she had purchased.

The Supplier in its response said that the contract does not refer to weeks, but that is misleading given the document titled Affiliation Request does refer to weeks. That response does suggest that the Supplier failed to honour what it had offered at the time of sale. Miss Y was led to believe from the documentation which states she was entitled to 20 weeks over 15 years. Having considered the Supplier’s response this does suggest there was a breach of contract.

I note that the Supplier said the five-day cancellation period was not in the contract, but was offered as a service and was contained in a separate letter. I have been provided with an apparently comprehensive set of documents, including the contract, by Nationwide which obtained these from the Supplier, but I have not seen any cancellation letter. That makes me wonder if one was provided. If it was not and Miss Y was not made aware of the cancellation period that would also suggest misrepresentation. I appreciate Miss Y may not have cancelled the contract within five days since she did not receive the login until after that period had elapsed. But such a short cancellation period may have caused her to reconsider her purchase at the time of sale.

The email trail does support Miss Y’s recollection of events and I believe it is sufficiently clear that when she finally got the link to login the product was not the same as the one she had been shown at the time of sale. She contacted the Supplier immediately and sought a refund. If she had been suffering from buyer’s remorse I would have expected her to have acted before she did. I am satisfied that being able to see the website made her realise what she had received was not what had been offered to her.

I have noted Nationwide's comments that Miss Y was not making proper use of the website and I presume this is based on the following from the Supplier:

"In your contract it does not state anything about weeks, but nevertheless you have a 25% discount at the Hotel Impressive Punta Cana for any time of the year. If you wish we can make a quotation for any amount of rooms you would like to reserve. Also, our prices at the platform are guaranteed as we have a value guarantee that can refund up to 110% of your purchase on another platform. Also, in addition you have access to another platform here you will be able to see the discounts in hotels as you are granted 1 prime credit of 3000 USD. You can activate them any time to use them as soon as possible."

I don't find this as persuasive as Nationwide does and I don't think Miss Y had grounds to be reassured that what she had been promised would be honoured by the Supplier. Her concern lay with the Supplier's website and not other websites which the Supplier has referred to in its email. I believe Miss Y was led to believe she would have access to discounted accommodation using the Supplier's website and I do not think this is what she was given.

On the balance of probabilities I consider that Miss Y has a valid claim under section 75.

Putting things right

For the reasons I've explained above, I'm of the opinion there was misrepresentation during the sale and a breach of contract, so I think Nationwide should:

1. Look at the credit card account from the day this payment was made and work out what the balance would've been today, or at the date the credit card was closed if applicable, without the amount that was debited and without any interest and charges that may have been paid as a result of this amount being included on the account.
2. Pay the difference between Miss Y's credit card balance and what the credit card balance would've been as calculated above; and - In addition to this, if there were any periods when without this payment, the account would've been in credit, then pay 8% simple interest per year on the amount it would've been in credit during those periods.
3. Refund any subsequent payments that may have been taken by the Supplier (subject to evidence being provided of such payments being made) plus 8% simple interest from the date of payment to the date of settlement.
4. Pay her the £50 compensation it previously offered, if it has not already done so.

My final decision

My final decision is that I uphold this complaint and I direct Nationwide Building Society to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Y to accept or reject my decision before 24 February 2025.

Ivor Graham
Ombudsman