

The complaint

Ms B complains that Nationwide Building Society hasn't refunded a payment she made using her credit card.

What happened

In May 2021, Ms B paid a £500 deposit to a company to carry out some work at her property. The total cost of the work was £18,000. She paid a further £10,000 in cash in July 2021. The work was to be carried out on her conservatory. This included installing a new bi-folding door, a new roof with windows, guttering, drainpipe, fascias, soffits and six spotlights.

The work commenced in September 2021. Ms B says the company had agreed to complete the work within four weeks, but she says by the end of October 2021 much of the work was still unfinished. Ms B says the company refused to come and complete the work until Ms B paid the outstanding balance of £7,500. However, she says she was not willing to pay the company anything further until they completed the work. She says she was unsatisfied with the quality of the work up to that point.

As no resolution could be found Ms B says she asked friends, family and arranged for other contractors to complete the work instead. She says that there are still underlying problems with the conservatory due to the substandard work originally carried out by the company. She then approached Nationwide in August 2023 to raise a claim for a refund under section 75 of the Consumer Credit Act 1974 ("section 75").

Nationwide didn't agree it was responsible for providing Ms B with a refund as it considered Ms B had breached the contract by not paying the company. However, it did pay her £150 compensation to apologise for the poor service it had provided to her while investigating her section 75 claim.

I sent Ms B and Nationwide my provisional decision on 14 November 2024. I explained why I didn't think the complaint should be upheld. I said:

The general effect of section 75 is that if Ms B has a claim for breach of contract or misrepresentation against the company she paid for goods or services, she can bring a like claim against Nationwide (as the provider of credit for that purchase). There are additional requirements that also need to be met, but for completeness I'm satisfied those are met here.

As well as disagreeing that there is a breach of contract, Nationwide has also stated that it doesn't believe the £500 Ms B paid using her credit card as a deposit was used for a contract involving the conservatory work. However, I'm satisfied that it was.

It seems Ms B initially paid this £500 deposit towards a contract for replacement windows, but that contract was cancelled. Instead, Ms B entered into a separate contract with the same company for work on her conservatory. The £500 deposit

Ms B paid wasn't refunded by the company. Further, I can see that on the conservatory contract the deposit is listed as £10,500. I've seen a receipt showing Ms B paid a cash deposit of £10,000 to the company. I'm therefore satisfied that the initial £500 deposit Ms B paid using her Nationwide credit card was simply transferred over to the new contract.

Ms B says that the company did not complete the work as agreed, the work it did complete wasn't to a satisfactory standard and it was different to what had been contractually agreed. Ms B hasn't been able to provide any independent evidence of the company having completed sub-standard work – such as, for example, commentary from a qualified professional. Given the work was also effectively abandoned while much of it was still outstanding, and she has since had other contractors complete the work, it would be difficult to demonstrate what, if any, defects that are still present were down to the company that originally started the work.

I'm also mindful that Ms B refused to pay the company the full amount it was owed under the contract, and I accept Nationwide's point that Ms B was arguably in breach of contract. With the evidence available to me, I can't reasonably conclude that the company acted unreasonably in not completing the work when payment was withheld.

I appreciate Ms B felt very strongly about making further payments until work was completed to the standard she believed had been agreed to. However, I don't have enough to persuade me that the work, up to that point, was substandard or wouldn't have been completed to the agreed standard had she not withheld the remaining funds.

I realise this will be disappointing for Ms B, but I've not seen enough to persuade me there was a breach of contract by the company. Therefore, I don't consider Nationwide has acted unfairly or unreasonably in not refunding the payment she made. I note it paid her £150 compensation for the poor service it provided while investigating her claim. I consider that to be a fair way to put things right and I don't think it needs to do more.

Nationwide accepted my provisional decision, but Ms B didn't. She provided a substantive response setting out why she believed she had provided sufficient evidence of misrepresentation and breach of contract by the company. She said that section 75 was intended to protect consumers, but my provisional decision had sided with Nationwide which was unreasonable.

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 done so I've reached the same conclusion I reached in my provisional decision and for the same reasons. However, I'll briefly address Ms B's further submissions and why these haven't persuaded me to reach a different finding.

Ms B says she has provided plenty of evidence concerning both a misrepresentation and breach of contract and she set these out again in some detail in response to the provisional decision. I won't respond to each and every point she made, because having considered them carefully, I'm not persuaded they make any difference to the overall outcome I've reached or why. I'll explain why.

While she has told us in detail what she believes was wrong about the sales process and the work completed by the company, I've seen nothing other than what she's told us to corroborate that. While she's provided some photos, I don't think these combined with what she has told us is enough in the specific circumstances of this case to persuade me that there was a misrepresentation or a breach of contract for which Nationwide ought to remedy.

As I set out in my provisional decision, it is simply Ms B's word that the work was substandard. While I accept Ms B has paid for additional work since that point, this isn't enough to say that what the company did until then was unsatisfactory. It's clear the work was left unfinished because Ms B refused to pay them, so naturally it would always require completion. As Ms B chose not to pay what she was contractually required to, I can't fairly say the company acted unreasonably in not completing the work. From everything I've seen, it's equally possible that the issues Ms B experienced were as a result of the work not being finished, rather than the work being sub-standard.

Ms B says that section 75 is intended to protect consumers. However, that doesn't mean it gives an automatic entitlement to a refund. Ms B still needs to demonstrate there has been a breach of contract or misrepresentation. For the reasons I've already set out, I'm not satisfied that she has sufficiently demonstrated this. I therefore don't think Nationwide has acted unfairly or unreasonably in declining her claim and complaint.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 2 January 2025.

Tero Hiltunen
Ombudsman