

complaint

Miss W complains that Nationwide Building Society won't refund to her the money that she paid for a modelling photo shoot. Her complaint is made against Nationwide under section 75 of the Consumer Credit Act 1974.

background

Miss W received an e-mail from a modelling agency about modelling work. It said that she needed a portfolio and gave her details of a photographer. She says that the modelling agency told her that it would provide her with modelling work. She used her Nationwide credit card to make three payments to the photographer – a booking deposit of £50 and an additional deposit of £150 (both in July 2015) and £575 in August 2015. She has not heard anything more from the modelling agency. So she complained to Nationwide under section 75 but wasn't satisfied with its response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. She concluded that the required link between the debtor, creditor and supplier had been broken. That was because Miss W says that the modelling agency has breached its contract but her payment was made to the photographer. And the adjudicator concluded that the link between them wasn't strong enough for section 75 to apply. She said that the photographer did what it was asked to do which was take photos of Miss W for her portfolio.

Miss W has asked for her complaint to be considered by an ombudsman. She says, in summary, that: the modelling agency told her that she needed photos for her portfolio - otherwise it wouldn't accept her application; she thought the agency would provide her with a contract after she purchased the photos but it hasn't been in touch with her since; they are fraudsters; the £50 initial deposit was taken over the phone by the modelling agency; and the modelling agency and the photographer are linked to each other.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier.

In Miss W's case, she is the debtor because she has used her Nationwide credit card to pay money to the photographer, Nationwide is the creditor because it has provided credit to Miss W and the photographer is the supplier because it has agreed to supply photos to Miss W. But Miss W complains that the modelling agency hasn't done what it said it would do. Nationwide has no relationship with the modelling agency as Miss W hasn't used her Nationwide credit card to make a payment to the agency. As the required relationship isn't present in these arrangements, Miss W's claim against Nationwide can't succeed under section 75. And the photographer has provided the photo shoot and photos that Miss W paid for.

There is clearly a link between the modelling agency and the photographer. But section 75 would only apply if they are “associates” – as that word is defined in section 184 of the Consumer Credit Act. And I’m not persuaded that there’s enough evidence to show that they are “associates”. So it wouldn’t be fair or reasonable in these circumstances for me to require Nationwide to refund and money to Miss W or to take any other action in response to her complaint.

my final decision

For these reasons, my decision is that I don’t uphold Miss W’s complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss W to accept or reject my decision before 27 June 2016.

Jarrold Hastings
ombudsman