

complaint

Mrs G bought and paid for two men's suits, using her Nationwide credit card, for her partner/fiancée ("P") to wear, the first at her son's wedding, and the second at their forthcoming wedding. The suits didn't fit and were of poor quality. Mrs G complains that Nationwide Building Society won't refund what she paid for the suits. She brings her complaint under section 75 of the Consumer Credit Act 1974.

background

Nationwide said that for there to be a valid claim under section 75, there had to be a debtor/creditor/supplier ("d/c/s") relationship. That meant there had to be a purchase contract between Mrs G, the "debtor" under the card contract, and the supplier of the suits. However in this case the suits weren't for the direct benefit of Mrs G, but for the benefit of P as demonstrated by the purchase invoice provided. So it declined her claim.

Our adjudicator recommended that this complaint should be upheld. He said that Mrs G chose and paid for the suits. He didn't believe that Nationwide disputed that she placed the order with the supplier. P's name appeared on the invoice. But one suit was bought to be worn at her wedding. The other suit was to be worn at her son's wedding and to match her outfit and what the rest of the wedding party were wearing.

The adjudicator thought it was reasonable to say that the suits were bought for her benefit. He thought she was a contracting party with the supplier, and so the d/c/s relationship was intact.

Nationwide responded to say, in summary, that it didn't agree that Mrs G had direct benefit of the suits as she wouldn't have been directly using them. Although she would have been affected by P's disappointment, it said this wasn't enough to establish a d/c/s/chain and a valid section 75 claim.

my findings

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

Section 75 is technical in its operation, and it is not every use of a credit card that will make the issuing company liable for a breach of contract or misrepresentation by a supplier. I agree that the d/c/s relationship that Nationwide refers to must be present for a section 75 claim to succeed.

However, in the context of two people living as partners, or husband and wife, even though only one of their names appears on an invoice for goods or services, the other, or indeed both of them, may in some circumstances be the buyer.

In this case the goods purchased were two men's suits to be worn by P. So it is not surprising that P's name appeared on the invoice. However the adjudicator was satisfied that Mrs G chose and paid for the suits. Furthermore, it appears she placed the order, which Nationwide hasn't disputed. In these circumstances, I am satisfied that Mrs G was the buyer of the suits, either alone or jointly with P, and so was a contracting party with S. In my view, this isn't displaced by the fact that only her partner P's name appeared on the invoice.

I find that the necessary d/c/s relationship was present in this case, and that Nationwide should therefore accept and pay Mrs G's claim under section 75.

my final decision

My decision is that I uphold this complaint, and order Nationwide Building Society to accept and pay Mrs G's claim under section 75.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 9 May 2016.

Lennox Towers
ombudsman