

complaint

Mr A complains that Nationwide Building Society ("Nationwide") refused his claim for a refund under Section 75 Consumer Credit Act 1974 ("Section 75").

background

In May 2018 Mr A attended a presentation, during which a 3-day course was offered. He says he was told that if two people signed up for the course and paid on the day, the cost would be £1,250 per person instead of £1,675. Mr A paid £1,250 with his Nationwide credit card. However, the day before he was due to attend the course, he was told he didn't qualify for the discount and was asked to pay an additional £425 to attend the course. Mr A did not attend the course and wants his payment refunded.

Unable to resolve the complaint with the supplier, Mr A contacted Nationwide to get a refund under Section 75. Nationwide declined his claim, it said Mr A had not cancelled his agreement with the supplier within the 14-day cancellation period. And it didn't think Mr A met the supplier's discount criteria, as the person he signed up with was neither a business partner, relationship partner or relative. When Mr A complained, it maintained it had fairly declined his claim.

Mr A remained unhappy, so he brought his complaint to our service. Our investigator didn't recommend the complaint should be upheld. She agreed with Nationwide that Mr A was not entitled to the price discount, so did not think there had been either a breach of contract or misrepresentation.

Mr A disagreed. In summary he said he was not told anything about the discount criteria, until after the 14-day cancellation period had already expired, so he couldn't cancel during this period. He said the change of price after the agreement was signed is a breach of contract.

Mr A requested time to provide further information, our investigator chased this up. Mr A did not respond within the deadline given, so the case was passed to me to review.

After considering all the evidence, I issued my provisional decision on this complaint in October 2020. In that provisional decision I set out why I thought Mr A's complaint should be upheld, as follows:

"As Mr A and the supplier have given contradictory accounts of what was discussed during the sales meeting, I'm unable to say with certainty what was discussed about the discount during the sale. So, I've looked at the sales paperwork to see what was agreed about the course price. Mr A was given an invoice confirming he paid the discounted rate. He was also provided with an offer sheet, displaying the full course price and discounted price. The discounted £1,250 price is marked by an asterisk and the following details are given:

*"genuine business/relationship partner/family member can be added for half price (*defined as having a pre-existing business, registered at Companies house, with both people listed as Directors/Shareholders, prior to the date of this offer)".*

The above details are given in small print at the very bottom of the page. I don't think the information about the discount criteria is displayed very prominently, so I would expect the

supplier to have drawn this to Mr A's attention. However, Mr A says he was not made aware of the criteria until the day before he was to attend the course. And I've seen nothing in the paperwork to suggest Mr A was specifically asked about meeting this criterion during the sale. I also note that in the welcome email the supplier sent Mr A after he'd signed up for the course, the discount offer is repeated, but there is no reference to the conditions that needed to be met to qualify for the discount. So, from what I've seen, I'm not satisfied that Mr A was made aware of the discount criteria when he signed up for the course.

Mr A says the discounted price, was the agreed price and the supplier's attempt to change the price the day before the course is a breach of contract. He also says that it was unfair that he was not given the opportunity to withdraw from the agreement as he was not made aware of the discount criteria, until his 14 -day right to withdraw had expired.

As I've already outlined, I'm not satisfied that Mr A was made aware of the discount criteria, before he signed up for the course. Mr A agreed to pay the £1,250, which is the amount stated on his invoice. And from what I've seen, the first time Mr A was made aware of the conditions required to qualify for the discount was nearly three weeks after signing up for the course, after his 14-day right to withdraw had already expired. In addition, I have not seen anything in the supplier's terms and conditions to indicate it can subsequently vary the course price.

Having regard to section 75, I think the supplier's attempt to vary the price after Mr A had signed up for the course, amounts to a breach of contract. To settle the complaint the supplier offered to book Mr A on another training event, if he paid an additional £297 registration fee, to transfer the course entry to a family member or friend (again plus registration fee) or provide an online study programme at no additional cost. I don't think it is fair that Mr A should pay any additional fee. As I understand it Mr A only signed up to the supplier's online portal to register for the event, he has not used any resources and he has gone on to complete a similar course with an alternative provider.

In the circumstances, I think it's fair for Nationwide to rework Mr A's credit card as if the payment of £1,250 on 19 May 2018 had not been made, and if that puts the account into credit-pay interest at the annual rate of 8% simple on the credit balance for the periods that the account was in credit and to refund the credit balance to Mr A".

I invited both parties to make any further submissions before I finalised the decision. Mr A agreed with my decision but felt that he should be paid compensation for the distress and inconvenience caused. He also said he should be compensated for his losses.

Nationwide said it accepted my decision and offered to pay Mr A £50 compensation. I let Mr A know that whilst it was clear the level of service provided by the supplier was less than expected, under Section 75, I'm only looking at what Nationwide did. I advised that having considered everything I thought Nationwide had responded to his Section 75 claim and complaint in a timely fashion. In addition, I said I had not seen anything to show any consequential losses suffered as a result of Nationwide's direct actions. In the circumstances I thought Nationwide's offer of £50 compensation was reasonable. I gave Mr A until 16 November 2020 to provide any further submissions.

my findings

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

Nationwide accepts my decision and Mr A has not provided any further submissions in respect of me outlining that I thought Nationwide's offer of £50 compensation was fair. So, in the circumstances I see no reason to reach a different conclusion.

my final decision

For the above reasons above and those set out in my provisional decision – my final decision is to uphold this complaint. I instruct Nationwide Building Society to;

- re-work Mr A's credit card account as if the payment of £1,250 on 19 May 2018 had not been made, and if that puts the account in credit – pay interest at the annual rate of 8% simple on the credit balance for the periods that the account was in credit and to refund the credit balance to Mr A.
- pay Mr A £50 compensation.

If Nationwide Building Society deducts tax from the interest element of my award it should send Mr A, a tax deduction certificate so he can use it to reclaim any tax he may be entitled to.

Under the rules of the Ombudsman Service, I am required to ask Mr A to accept or reject my decision before 1 January 2021.

Karen Dennis-Barry
ombudsman