

complaint

Mr P complains about Nationwide Building Society's refusal to give him the refund he has requested on his credit card account.

background

I set out the background to Mr P's complaint in my earlier decision, which was a provisional decision. But for ease of reading I will set out that background again here.

In June 2018 Mr P spoke to a company that I will call "C" about his motorhome. C told Mr P that his motorhome required repairs. C gave Mr P a verbal estimate of the costs. It is Mr P's position that this estimate was a fixed price for the work, which was binding. The work began in September 2018 and finished in October 2018. Mr P came to collect his motorhome. At this point, according to Mr P, C told him that the cost of the work had increased. Specifically, C's bill was for twice the amount of the original estimate. Mr P suggested this was a breach of contract because the price of the work had been fixed; moreover, he indicated that given the estimate had been so far out, it had been misleading. Mr P disagreed that C was entitled to charge him the new amount. Mr P wanted a breakdown of the costs. In particular, he wanted, amongst other things, the names and qualifications of everyone who worked on his motorhome their start and finish times, and the specific work carried out by each worker.

Despite his misgivings Mr P paid the bill in full, but under protest, he did so partly by using his credit card with Nationwide. Mr P wants Nationwide to pay him the difference between the estimated and the actual bill. Mr P also wanted to be refunded for the cost of replacing the motorhome's water tanks that appeared to have been damaged in the course of the repairs. In bringing his complaint Mr P relies on the rights he suggests he has against Nationwide under Section 75 of the Consumer Credit Act 1974.

Nationwide declined to meet Mr P's claim. It explained that it had contacted C. C had told it that Mr P had been provided with an estimate, but this was precisely what it was, that is an indication of what the repairs *might* cost. C had also indicated that Mr P had been told when the cost of the repairs increased as the repairs were in progress. Moreover, Nationwide thought that C had supplied a detailed invoice that provided a reasonable explanation for the amount it had ultimately charged. In the circumstances, Nationwide, did not agree it ought reasonably to refund Mr P as he asked.

That said, it accepted C had damaged the motorhome's water tanks in the course of carrying out the repairs. Nationwide thought C ought not to have done this, so it offered to refund Mr P for the cost of the water tanks.

Dissatisfied with Nationwide's response Mr P complained to our service.

I reviewed Mr P's complaint and when I'd finished I issued a provisional decision. In it I did not recommend upholding Mr P's complaint. In summary, I agreed that it was fair and reasonable to take the provisions of Section 75 into account when looking at this complaint. I explained, as the parties already knew, that Section 75 provides consumers with some protection where there has been misrepresentation or breach of contract.

I looked first at the question of misrepresentation. I was persuaded that, given the nature of the work, C was unlikely to have been able to know exactly what work was going to be

required in advance. That being so, I was satisfied that C had given Mr P an estimate rather than a hard and fast set price. I accepted that it was also likely that C had indicated the estimate was the minimum Mr P should expect to pay. Further, I was not persuaded Mr P had made a loss here; the work had been done and he now had the benefit of it. Neither was I persuaded that he would not have gone ahead with the work if he had known the estimate was not guaranteed to be the final price.

I then looked at breach of contract. In the circumstances, I'd already found that C had given Mr P an estimate of the cost not a fixed price. It followed that I found it was never a term of the contract that C would only charge Mr P the estimated costs for the work. Neither did I think the provisions in consumer law that apply where the contract does not expressly fix a price or other consideration – and does not say how it is to be fixed – should apply here.

For all of these reasons I concluded that I was not persuaded that the contract had been misrepresented or breached. It followed I had no proper basis to ask Nationwide to refund Mr P.

I invited the parties to respond to my provisional decision should they wish to do so. They both did. We sent Nationwide, Mr P's response and vice versa. I invited both parties to comment on the other party's response should they want to do that.

In short, Nationwide responded to say that it agreed with my provisional decision. It suggested there was nothing persuasive to suggest that Mr P and C had ever agreed a fixed price for the contract. Rather, from its perspective, all the information provided tended to show that C had estimated the cost – which was intended to give Mr P an idea of the minimum he could expect to pay, and that Mr P had been kept informed when those costs increased.

Mr P sent in a detailed response. In summary, he reiterated his previous stance. He also suggested that since C was the designer and manufacturer of his motor home and since this was a standard repair to a known problem, C had been able to say from the beginning what the cost would be. Therefore, Mr P suggested C was in a position to agree a fixed price for the contract and that is what it had done. He mentioned that some of the information that C had provided was "hearsay". He did not agree that it was possible for C to have done all the work it had charged him for in the time that it had had the motorhome in its possession.

Further, he told us that C had done remedial work on his motorhome in the past (he has had the motorhome since 2008) and the estimates he'd been given for those repairs had been accurate. He also pointed out that those estimates had been verbal not written.

my findings

I thank Mr P and Nationwide for their responses. I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've reviewed the complete file again and revisited my provisional decision.

It has been particularly helpful that each of the parties took the time to set out their views, so that I have been able to gain a fuller understanding of their respective positions and concerns.

I have come to the conclusion that I have no proper basis to require Nationwide to do anything more. I recognise this may disappoint Mr P, that's not my intention, far from it. I'll go through my reasons below.

As I also said in my provisional decision, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Up to a point, I can see where Mr P is coming from when he suggests that, as the designer and manufacturer of his motorhome, C was, on the face of it, in a very good position to give him an accurate estimate of the cost of the repair work. But just because C may have been in this situation and I have no reason to doubt what Mr P says about this point, that does not mean it therefore must have given him a fixed price for the repair from the beginning. The opposite could be true; knowing its own design and the likely nature of the repair work, it might have been wary of giving anything other than a general estimate before it actually started the work and saw what was what. And that is what C indicates happened here. C has suggested the price it gave at the beginning was merely to let Mr P know what the minimum price might be.

Mr P indicates that it was a known fault. That may be so. But again, that does not persuade me that just because the fault was a known one C agreed to stick to a fixed price. That would put all the risk on C, and I find it unlikely that it would've taken that risk, in the circumstances. C more than anyone else must have been aware how the price could escalate depending on what it had to do.

C suggests it kept Mr P informed and told him when the price increased. Mr P says that's not so. But if I am to accept Mr P's version of events, not only did C give him a set price, it then went back on its word, said nothing to him about this until out of the blue, when he came to pick up his motorhome, C presented him with a bill for twice the amount agreed. That would be quite a high risk approach to take. Mr P could have refused to pay or not had the means to pay in that scenario. Moreover, Mr P was an established repeat customer, who in the normal course of events might continue using C's services in the future. Further, both parties agree there was contact between them while C was doing the repairs. They just disagree about what was said. I find it unlikely, given how the cost of the work was increasing, that C did not take the opportunity to tell Mr P about this and get his consent to carry on.

Mr P talks about hearsay. This service is not a court and is not bound by the rules of evidence a court must follow. But I have no reason to doubt that the employees of C who have provided information are speaking on behalf of C and giving us its side of the story.

I've not been presented with any persuasive information to show that C did not do the work it said it did, even if Mr P appears to think it's not possible. Moreover, the work cost around

21,000 Euros. If I were to order Nationwide to refund about half that, Mr P would benefit from having 21,000 Euros of work for half that price. That would not be fair or reasonable.

It may be correct that it was C's practice to give verbal estimates rather than written contracts up front. That said, if this was a standard repair with a fixed cost, I find it surprising that C did not have a standard contract to give to customers at the beginning of the work. It would certainly then have lessened the chances of C having to face a dispute like this.

I've not been persuaded by the new information Mr P sent in after my provisional decision. I have come to the same findings for the same reasons as I set out in my provisional decision and in this final decision.

Mr P might want to think about whether, on reflection, he wants to accept Nationwide's offer to pay for the damage to the water tanks. If he does then he will need to speak directly to Nationwide to sort this out.

my final decision

My final decision is that I do not uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 June 2021.

Joyce Gordon
ombudsman