

complaint

Mr D complains that Nationwide Building Society rejected his claim under Section 75 Consumer Credit Act 1975 in respect of a deposit paid to a wedding venue.

background

In July 2016 Mr D made a payment of £4,500 to a wedding venue, which I will call L, using his Nationwide credit card. He had made an earlier payment of £500 using a different credit card. The first payment was described as a booking deposit and the second was described as a further deposit made 12 months before the wedding was due to take place. The wedding was to be between his daughter and her fiancé, but regrettably the relationship broke down and it was cancelled.

Mr D asked for the return of his deposit, but L refused and referred to its terms and conditions which said the payment was non-refundable. He then asked Nationwide to make a chargeback. It said that it was too late to do this and it gave consideration to a potential claim under Section 75.

However, it concluded there wasn't a valid claim. It said that for a claim to succeed there must be a link between the parties; this is known as the "debtor-creditor-supplier" (DCS) link. It explained that such a link is broken when a purchase is made on behalf of a third party and it considered that to be the case with Mr D's claim.

It said that regardless of the reasons Mr D paid for the services on behalf of his daughter the fact remained that he paid for these for the benefit of someone else. It noted he had explained that he had made it clear to L that he was the customer and that all correspondence should go to his daughter, but the bills to him.

However, Nationwide noted that all the correspondence, including the confirmation letter and invoice was in the name of Miss D and her fiancé. It argued that this showed the contract was in their names and due to this they formed a third party in this transaction which broke the DCS link. It also said that even if DCS link hadn't been broken it didn't think his claim was valid.

Mr D brought his complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He said Mr D wasn't noted on any of the correspondence even though he had made both payments. He went on to say that the purchasers were Miss D and her fiancé as they were the ones getting married. Had either of them made the payment then the DCS link would have remained intact.

Mr D didn't agree and said there is no provision in the Consumer Credit Act 1974 to negate the obligation on the creditor to the debtor if the "benefit" is transferred. He pointed out there was an error in the invoicing addresses, and that he and his daughter would have been joint beneficiaries. He maintained that he was the sole purchaser and he referenced a decision by a colleague which he said supported his 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.

I have every sympathy with Mr D and I thank him for his clear and well set out arguments. This complaint has been submitted as a claim under section 75 of the Consumer Credit Act 1974. Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

I think it best to start with the relevant legislation. Section 75 says:

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

So there has to be an agreement linking the three parties. In this case the debtor is Mr D, the creditor is Nationwide and the supplier is L. The question is does Mr D have a link with L such that he may make a claim under Section 75? Or to put it another way is he party to an agreement with L.

The documentation supplied by Mr D is all addressed to his daughter and fiancé. The initial letter states: *"[L] is now reserved for you on Sunday July 16, 2017, for your planned wedding and reception. I acknowledge receipt of your Booking Deposit payment of £500 against the final cost of the Event and confirm that your invoice for a further deposit of £4500 will be forwarded to you for payment by Thursday 16 June 2016.*

Our invoice for the balance of the costs will be forwarded to you for payment by Friday 23 June 2017".

The invoice for £500 is in the name of Miss D and her fiancé and marked received with thanks.

The third document is a letter dated 17 May addressed to Miss D and her fiancé. It opens: *"Further to your booking of [L]"* before requesting the further deposit.

I have also noted that when Mr D was seeking to get his money back L responded and said *The reservation of [L] was made by [Miss D] and Mr X back on the 1st September 2015.*

Mr D has explained that he asked L to send all correspondence to his daughter as she was making the arrangements and it would be pointless to send it to him only for him to have to pass it on to her. He explained that L made an error in not using his name on the invoice.

I appreciate the organising of a wedding is often a family matter embracing one or more members of the family. However, I can see nothing in this paperwork that supports the argument that Mr D had a link with L as required by Section 75. To do so I have to accept that all the paperwork was incorrectly addressed and L had, in effect, entered into an agreement with Mr D and not the recipients of the letters and the invoice.

Furthermore, L's response to his request for a repayment indicates that it believed it had entered into a contract with his daughter and her finance.

I accept that Mr D wasn't intending to pass the cost on to his daughter or her fiancé and so has borne the loss. In the circumstances I think it can be regarded as a gift on his part. Section 75 does apply in circumstances where a person buys goods or services which they then gift to another. But that is where they have an agreement with the supplier to acquire the goods or services and they then gift them to another.

It seems to me that Miss D and her fiancé had entered into an agreement with L and that was then being funded, in part at least, by Mr D. If the wedding had gone ahead and there had been, say some damage and L had sought to charge for that damage I believe it would only have recourse against the people with whom it had legally contracted; Miss D and her finance. It wouldn't have recourse against Mr D even though he had paid for the venue.

If it is accepted that Mr D had an agreement with L then he has challenged the investigator's view that the payment wasn't for his benefit. Mr D has argued that the payment he made was for the benefit of himself, his wife and his daughter. He references a decision made by a colleague. I would point out that each decision is made on its own facts and I believe the circumstances in the other case are somewhat different.

In that case two people were living as partners and one bought clothes for the other. The invoice was in the name of the partner for whom the clothes were intended and the payment was made by the other. However it was accepted that the payer had chosen and paid for the suits. Mr D has told us that Miss D and her fiancé carried out the research and chose the venue. Mr D's role, as he has pointed out was to be the payer. He didn't make a gift of something he had acquired or paid for. He simply paid for the contract into which Miss D and her fiancé had entered.

As I said at the outset of my decision I have a great deal of sympathy for Mr D, but I do not believe I can uphold his complaint.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 February 2019.

Ivor Graham
ombudsman