

The complaint

Mr W says National Westminster Bank Plc has treated him unfairly in relation to a transaction on his credit card which was part payment for a car refurbishment.

What happened

Mr W bought a rare performance sports car in 2010 on finance. He has said in his statement provided by way of his representative that he *"bought it as an investment. My son (Mr G) has knowledge and interest in these types of car and I went with his advice with regards to the investment. He sourced the car through a garage."* Mr W has also said *"I had agreed with (Mr G) that he would keep and look after the vehicle for me. The V5 registration document which registers the keeper's details was made out in my son's name and as the registered keeper with DVLA. The finance agreement that I entered into with (a finance company) was arranged for me by (the garage which sold the vehicle)"*.

During late 2013 and early 2014 it was decided to refurbish the car as it was rare and could fetch a premium once refitted and refurbished. As Mr W says Mr G *"did some research and made some investigations"* and *"made some enquiries and he spoke to all three companies (he'd found) and we decided to ask (Company A) to quote for the work."*

Mr W then made numerous payments to Company A in a variety of payment methods over an extended period of time including a transaction to Company A in April 2016 using his NatWest credit card. It has since transpired that Company A was in difficulties from around that time and onward although Mr W and Mr G were unaware of this. Company A had been in possession of the car for some years. Mr W and Mr G started to be concerned and were met with more and more evasive answers. In February 2019 Mr G went to Company A's location and discovered the car was missing and there was no sign of Company A. So this was reported to the Police. It transpires Company A was dissolved in December 2018 and evicted from its premises. The car has never been recovered.

So Mr W approached NatWest in order to make a claim under Section 75 of the Consumer Credit Act 1974 for the money he paid towards the car refurbishment and consequential losses he says he's suffered. NatWest considered the matter and responded in October 2019 saying that the only apparent contract in place for the refurbishment was between Mr G and Company A. It also said that there was a lack of evidence of a contract between Mr W and Company A and thus it was unable to agree to a claim.

Unhappy with NatWest's position Mr W brought his complaint to this service. Our Investigator felt NatWest hadn't treated Mr W unfairly. Mr W remains unhappy and so this complaint comes to me for a decision.

What I've decided – and why

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

NatWest and Mr W don't agree to some of the key issues here. I can only make my decision based on the evidence available and the arguments made. In short I must decide what is most likely to have happened. Or in other words, what happened on the balance of probabilities.

Mr W used his credit card with NatWest to pay Company A for one of the many transactions he had with it over an extended period of time for this car to be refurbished. This means NatWest has certain responsibilities to Mr W which arise from the relevant law, specifically, section 75 of the Consumer Credit Act 1974 ("CCA"). There is no need for me to go into great detail about how this section operates, but in summary Section 75 has the effect of allowing Mr W to hold NatWest liable for breaches of contract by Company A, or misrepresentations made by it in relation to the service provided. Again without going into a large amount of detail a breach of contract occurs when one party to a contract fails to provide what it has agreed to under that contract. And this is what Mr W says happened here.

However before deciding on whether there is breach or misrepresentation here there are some tests set out in the CCA which also have to be met before these issues can be considered. One of these tests is around financial limits and having considered these I think on balance that Mr W's claim meets these criteria.

Another test in the CCA for a valid claim is that there must be a debtor-creditor-supplier arrangement in place. This is often referred to as the 'DCS relationship' or simply 'DCS'. This means that there needs to be the necessary three-party relationship. This often looks like:

- A debtor (who makes repayments to the creditor for the borrowing for the purchase)
- A creditor (who has to send the borrowed amount direct to the supplier)
- A supplier (who has to provide what was purchased to the debtor)

This means the person who paid for the goods, the debtor, should have a contractual relationship with the company who supplied the goods, as well as with the credit provider, the creditor. And this is the crux of the complaint here. NatWest says its not liable under the CCA because DCS isn't made out in relation to Mr W (its customer) and as such whether Company A breached the contract or not doesn't make a difference as it's not liable in any event. Mr W says that the DCS relationship is in place so NatWest can be held liable for any breach of contract by Company A.

In this case there wasn't a formal written contractual agreement document created and agreed at the beginning of the agreement that you'd see in many situations. But that doesn't mean there isn't a contract which binds the parties as these can take many forms. But the absence of a formal written contractual agreement things are less clear cut.

There are however some emails between Mr G and Company A from late 2013 and in 2014. In these there is a discussion of requirements for the car refurbishment and costings. I note that Mr W isn't one of the parties being emailed. Its solely Mr G and Company A's representatives in the email conversations. Which is supported by Mr W's comments on the matter that Mr G had sourced Company A and liaised with it.

Mr W points out that all the payments to Company A were made by him. But it doesn't necessarily follow that he's part of the contract to refurbish the car. Just because you provide the funds doesn't mean necessarily you're a party to the contract agreed. And similarly the fact that Mr W purchased the car originally doesn't mean he was a contracting party to its refurbishment some years later. And bearing in mind the conflicting positions of the parties to this complaint I need to decide on balance whether NatWest's position on the matter is fair or not.

It is of note that the car concerned was a limited edition (only 1000 made) high performance vehicle, which had particular styling, specifications and was only available in one colour. This model of car has a substantial fan base and due to its performance, specifications and limited numbers has significant appeal nowadays, many years after it was produced. And this appeal is reflected in the cost of purchasing cars of this model now. And it is clear from what Mr W says that Mr G took the lead on sourcing the refurbishment and liaising with Company A. As Mr W says *"My son (Mr G) has knowledge and interest in these types of car and I went with his advice with regards to the investment."* So although Mr G didn't purchase the car it seems he was a significant influence in its purchase. Indeed it seems from what Mr W says about him being the person with knowledge and interest in these types of car, that he sourced the car and the later refurbishing of it and did all the available written liaison with Company A that Mr G was the driving force in relation to everything to do with the car.

Mr W says Mr G was the named person on the V5 document and recorded as the registered keeper with DVLA. Aside from Mr W's written complaint submissions and his funding the purchase of the car through finance, the majority of all the documentation from the time points to Mr G being the person who was the key person in the purchase and planned refurbishment of this car. All of the evidence considered together leads me to consider that Mr W was funding Mr G's interest in this car. It is unclear why Mr G didn't purchase the car himself (whether outright or on finance). But as Mr W says it was Mr G who had the interest and knowledge about a specialised niche car such as this.

It is also clear that the emails sent between Company A and Mr G had very specific information about the refurbishment of this specific car. I think it fair to say the specifications discussed in these emails require a degree of specialist knowledge on the matter. To illustrate this I note the following:

"Hi (Mr G) Nice to meet you this afternoon, Thanks for spending the time to visit us and see what we are about. Hope I answered all or most of your questions, For the amount of power your looking for is a lot and to make it reliable is another level. As you have had past experience with other engine builders who have not been able to do this for you which I am sorry you didn't find us earlier and had the job done right first time round and not spend so much money getting there. When we spoke this afternoon we discussed a 6-speed conversion to handle the amount of power you would like. These boxes are capable of hold a lot of power 500+hp if you wish to go that far."

So it seems to me that Mr G was pushing matters forward with his specialist knowledge on these matters and there is no persuasive evidence to Mr W providing anything other than the funding for this contract for the car's refurbishment.

I'll now address some of Mr W's key arguments as I see them.

Mr W notes the emails I've referred to and say his omission from them is not conclusive or relevant. Bearing in mind they are the only contemporaneous written records of what happened at that time they are clearly relevant to establishing who were the contracting parties. And although not decisive to my thinking they are important to my mind in understanding what happened and who Company A considered themselves to be dealing with.

Mr W notes that he paid for the refurbishment and he disputes that there is no evidence that he was involved in the contract. Clearly Mr W says that he considers he was a party to the contract so there is evidence for me to consider that he was party to the contract. However for the reasons given I'm not persuaded he was a party to the contract. Financing the purchase of the car and funding the refurbishment aren't enough. It is clear to my mind that Company A were dealing with Mr G and he was agreeing the work and agreeing to the

quoted costs. It's possible that Company A weren't even particularly aware of the nature of Mr W's involvement if at all. So for these reasons and those described earlier I don't think Mr W was a contracting party in the refurbishment of the car.

Mr W says he has benefited from the contract. I take this to suggest that there was some form of third-party contract arrangement here as clearly he's not profited or benefited otherwise from what has happened seeing as he's paid out money and lost the car with nothing to show for this. I'm not persuaded by this argument of a third-party contract as I've not seen persuasive evidence of the criteria required for such being met here. And I note from Mr W's own submissions (which are extensive) he does not set out the precise details of either the agreement between him and Mr G nor what the agreement was between Mr G, Mr W and Company A. I've seen no persuasive evidence that Company A were aware they were contracting with Mr W and Mr G. It's possible that it was aware that Mr W was funding the matter but that isn't the same as Company A agreeing to a three-party contract. And I've seen no persuasive evidence of the irrevocability of such a third-party contract.

Mr W notes that the Investigator in this case said there was no evidence to suggest that Mr G was acting as agent for Mr W and argues that there isn't evidence to suggest he wasn't acting as agent either. I'm not persuaded by this. Considering Mr W's extensive submissions to this service I think if there had been a formal agreement between Mr G and Mr W (including some form of agency agreement) then I think it likely Mr W would have mentioned it and described it originally. Bearing in mind the car was purchased in 2010 and liaison with Company A didn't start until 2013 and neither Mr W nor Mr G seem to have sought to drive matters forward until some years after that, it doesn't seem that this endeavour was done to turn a profit quickly on formal terms between them. And bearing in mind Mr W has professional representation who were on notice of the issues at hand here (notwithstanding their own professional knowledge) had there been an agency agreement in place Mr W should have set this out to this service at the start and provided any supporting documentation then. But considering the wealth of comment and documentary evidence provided by Mr W and no description of such an agreement being in place then on balance I'm happy that no such agreement was in place.

Mr W's arguments here are that in essence his statement on what happened here should be decisive. That he was the driving force behind everything and that "*the contract had to be between Mr W and the garage (Company A)*". This is far from persuasive and undermined by the evidence provided by Mr W in his commentary, the emails he's submitted as I've described and for the reasons I've described.

I note with interest that Mr W's representative has said the evidence "*relied upon in support of the Ombudsman's decision is not evidence that can be relied upon.*" All the evidence in this case has been supplied by Mr W and his representative. This service has not relied upon evidence supplied by Company A or any other party. I should clarify that the position to which Mr W's representative refers was an assessment by an Investigator (not an Ombudsman), which is the first part of this service's two-part process as explained in that assessment. That assessment wasn't a 'decision' and wasn't binding.

Mr W's representative has said that it is Mr W's case that he was the owner of the vehicle. This isn't disputed. Nor is it the crux of the matter. The crux is whether the DCS relationship is intact or not. And on balance I'm satisfied that Mr W wasn't the contracting party in the contract for the works on the car. Which means that the DCS chain is broken. And thus the complaint about NatWest's position on the matter is unsuccessful for all the reasons I've described.

So all in all having considered NatWest's position on the matter I'm not persuaded its treated Mr W unfairly. I'm not persuaded on balance that Mr W was actually the contracting party. So I don't think NatWest hasn't done anything wrong here which needs remedy.

I appreciate Mr W will be disappointed with this decision. And not only has Mr W paid Company A this substantial sum of money but has lost the car on top of this. And I'd imagine he's possibly incurred other costs as well. So I can well appreciate his disappointment at what has happened. But NatWest has treated him fairly here.

My final decision

For the reasons set out above, I do not uphold the complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 November 2021.

Rod Glyn-Thomas
Ombudsman