

## **The complaint**

Mr P complains about the response of NatWest Bank PLC ("NatWest") to his request for redress for a breach of contract he holds it responsible for.

## **What happened**

In July 2019 Mr P entered into a contract for works to his garden with a limited company I will call "C". The total cost of the works as agreed in the contract is £8,000.

Primarily, Mr P was unhappy with the quality of C's work and claimed that C had breached its contract with him. Mr P complained to C. Mr P was unable to agree with C what, if anything, should be done to put the works right. C has since been dissolved.

Mr P had paid C, in part, using his NatWest credit card. As Mr P had used this method of payment he considers he is entitled to require NatWest to put things right. In particular, Mr P considers that he has a like claim against NatWest as against C for breach of contract. Mr P indicates he has this like claim due to the provisions of Section 75 of the Consumer Credit Act 1974 ("Section 75"). The general effect of Section 75 is that if Mr P has a claim for misrepresentation or breach of contract against the supplier, C, he can also bring a like claim against NatWest provided certain conditions are met.

In any event, there is no disagreement between Mr P and NatWest that Mr P is entitled to rely on Section 75 in this instance. Moreover, both agree that C did not carry out the work with the degree of skill and care that Mr P was entitled to expect. Therefore, they both also agree that C did breach its contract with Mr P.

The only issue that now remains is what is a fair and reasonable remedy in the individual circumstances of this complaint. To aid this discussion Mr P commissioned and paid for several reports. Despite this, the parties were not able to agree about the redress. The main point of contention is the amount of the redress that Mr P is seeking. NatWest considered that if it paid this amount it would be "bettering" Mr P's position. That is putting him into a better position than he would have been in if the contract with C had been properly performed. Therefore it wanted to pay him £8,000 and also refund him for the amount he paid for the reports. But that is as far as it wanted to go. Whereas Mr P's stance is that if the work set out in the reports is done all it will do is put him in the same position he would have been in if C had properly performed the contract.

In addition, and very much as a secondary part of his complaint, Mr P is unhappy about how NatWest treated him. He indicated that as a result of this he had experienced distress and inconvenience and wanted compensation for this. NatWest did not agree it had done anything wrong here.

Dissatisfied with NatWest's response, Mr P complained to this service.

Mr P sent in references for final decisions related to other complaints which had been referred to this service. Mr P thought the circumstances of those complaints were so like his own complaint that they were relevant here. In particular, he indicated the approach to redress in those decisions should help guide the conclusions reached about his complaint

One of our investigators looked into Mr P's complaint. Our investigator recommended that NatWest pay for the demolition, removal and replacement of the work done by C. The payments were to be made by NatWest directly to the contractor.

Further, our investigator also recommended that Mr P provide NatWest with an up-to-date quote for this work with the work itemised. Our investigator also recommended that NatWest pay for the building materials that Mr P had supplied and C had used (porcelain tiles and Astro-turf) and the reports that Mr P paid for.

However, our investigator did not recommend that Mr P was entitled to a payment for distress and inconvenience due to how NatWest had handled this matter.

Neither Mr P nor NatWest accepted this recommendation. There then followed a series of detailed suggested amendments, objections, offers and counter offers which I've summarised below.

- Mr P wanted to pay the new contractor directly. He suggested that NatWest could then pay him once he gave it appropriate invoices from the contractor. His reason for requesting this was that from a logistical point of view this might be the best way all round to manage things. Mr P accepted our investigator's recommendation regarding not making any award for distress and inconvenience.
- NatWest was prepared to pay for the demolition and removal of the work done by C. Its stance being that this would put Mr P back into the position he'd been in before C started the work. However, NatWest did not think that Mr P had provided enough information yet to show what those costs might be. Therefore, it asked that Mr P provide a further two quotes. NatWest was expecting to see that 75% of the quote would relate to the demolition and removal, and 25% to the replacement work. Although it did accept the lines of demarcation might not be that easy to identify as there was likely to be some cross-over in the works. In any event, NatWest was not prepared to pay for the replacement of the work done by C. Nor it seems was it prepared to reimburse Mr P for the money he had already paid C (Mr P had not paid C the full £8,000 instead he had paid it £7,600).
- Mr P disagreed with NatWest's proposal he wanted it to pay for the demolition and removal of C's work and the rebuild work too, with a contractor of his choice. He agreed to provide an up- to- date quote for this work. He also wanted NatWest to reimburse him for the materials he'd paid for (under the contract with C), or he wanted a payment that equaled the current market value of those materials. Mr P also asked that NatWest reimburse him for the sums he paid for the reports, (£180, £180 and £250). Further, Mr P gave his reasons for saying that NatWest's remedy would not put him in the position he was in before C started work. Moreover, Mr P explained why he thought he could not reasonably ask for more than one quote.
- NatWest outlined that if it were both to pay for the demolition, removal, and replacement of the work together with reimbursing Mr P for the money he'd paid to C it would essentially be giving Mr P a free garden. (However, this was not the remedy that this service had put forward, neither was it the remedy Mr P had asked for). NatWest did not consider this to be fair or reasonable. On this basis it would agree to pay for the replacement work, but it would only agree to pay £8,000 for this.
- Later, NatWest told us it now agreed with our investigator's recommendation on the proviso that Mr P provide three up-to-date quotes. Its concern seemed to be centered on the fact that a contract that originally involved work priced at £8,000 was now seemingly going to cost around £40,000 to remove, start again and replace. It wanted the quotes to all include a full break-down of the costs.
- Mr P responded that he could not get the three quotes NatWest wanted. In any event, in his opinion the three reports he'd already sent in provided the information

NatWest had asked for. Notwithstanding the above Mr P made two counter-offers to provide two new quotes if NatWest agreed not to challenge these quotes. Mr P wanted to be able to choose which suppliers could quote for the work. He then made two different proposals about what NatWest should pay him and when.

- NatWest declined Mr P's counter-offer. Its reasoning was *"given it is not clear exactly what the offer is, other than it is an open offer for Mr P to spend unspecified amounts on the garden design and for us to pay at various stages of the project, we don't feel it is unreasonable for Mr P to get two quotes to complete the work so we can agree an actual figure in full and final settlement."*

The complaint had reached an impasse therefore I was asked to take a fresh look at it.

I reviewed Mr P's complaint. I decided to issue a provisional decision. This was because the remedy I proposed was not the same as the remedy our investigator recommended. That being the case, I thought it was fair to explain that to the parties and give them the chance to respond before I made my final decision. As I have already mentioned, I issued a provisional decision and I've set out below what I decided provisionally - and why. This forms part of my final decision.

*"What I've decided and why*

*First, 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.*

*Both Mr P and NatWest agree that Section 75 is relevant to Mr P's complaint as I have already mentioned. They also agree that C breached its contract with Mr P, and he has a like claim against NatWest as against C for this breach of contract. The question I've got to think about is what redress is fair and reasonable here.*

*After much to and fro Mr P and NatWest have got to the point where they both agree NatWest should pay for the demolition and removal of C's work and then the rebuilding of the garden in line with the original contract with C. I agree that on the face of it this seems to be a fair and reasonable position. The difficulty though is how this is to be achieved and here the parties are miles apart, regrettably.*

*Further, I think it is reasonable that NatWest wants to establish with a fair degree of certainty how much it will need to pay to put things right. It also wants a breakdown of the work, which again I think is reasonable. I assume it wants to check that the work that being rectified is the work C did and the rebuilding work goes no further than what was originally agreed in the contract between Mr P and C. However, I've looked at the reports Mr P provided, and I think that they provide a sufficient level of detail about what work is required and why. In other words I think they go far enough to answer NatWest's legitimate concerns on these points.*

*I appreciate that NatWest wanted Mr P to obtain three new quotes. Mr P has raised various objections to this including that he fears he may be blacklisted by garden contractors. However, I note in his most recent counter-offer he did accept that he would be able to provide two fresh quotes. Ideally there should be at least three up-to-date quotes for the work. However, the history of this complaint suggests to me that getting three new quotes now may not be straightforward and even if the quotes could be obtained more toing and froing is likely to ensue. Moreover, I have no reason to doubt Mr P when he says he just*

cannot obtain three quotes. In the circumstances, I think it is best to go with the information we have got already.

However, I do note that the contractors were all quoting for the work. That might mean that NatWest does not consider them to be truly impartial, but it has not said that is a concern for it. If that is its objection, it is open to NatWest to appoint its own experts. If it wants to do this please might it tell me this in its response to this provisional decision. However, I accept the logistics of this might mean this is not a proportionate solution. Moreover, I ask NatWest to bear in mind that this is a long-running matter, and it seems to me it is in the best interest of both parties to come to an agreement sooner rather than later.

As I said above I recognise that NatWest and no doubt Mr P too, want to be able to establish at this stage what the likely final bill is going to be. But here is the difficulty all of the contractors have said a version of this on that point

*"Please note this work is an estimate and not a fixed price quote as [the contractor] did not install the initial scope of work.*

*Until the foundations of the initial project are exposed the exact nature of work cannot be determined, and it is at this point a true assessment can be made as to whether the works fall within the necessary building standards. This may lead to an increase in price if unforeseen problems are encountered."*

*This means that if I limit what NatWest has to pay to the lowest of the current quotes, Mr P may still, in theory, have more to pay once the corrective work begins. However, I think this is fair and reasonable for several reasons which I set out below.*

*The increase in price is purely a hypothetical possibility at this point, so may never come to pass. Further, I don't think it is fair and reasonable to require NatWest to be bound upfront to pay open-ended costs especially if the contractors know that is the case.*

*Moreover, the explanations in the reports about what C did and what C ought to have done lead me to believe that the work Mr P wanted could never have been properly done for the £8,000. For example, all the quotes to correct and rebuild the retaining wall alone cost more than the £8,000 in one case double that. It would appear that this is because this aspect of the work required a level of preparation, planning, specialist knowledge and building control inspection that is not seemingly anticipated and certainly not detailed in the contract with C.*

*Or to take another example the correct laying of the astro-turf needed a lot of pre-work and then special preparation which again is not seemingly anticipated and certainly not detailed in the contract with C.*

*Therefore by making sure the work is done correctly this time around there is potentially an element of "betterment" here for Mr P. One fair or reasonable answer to this might be to require NatWest only pay up to a maximum of £8,000 for the rebuild work. But it seems it is not possible in practical terms to neatly fit the work into purely demolition and removal work on the one hand and rebuild work on the other. Moreover, it appears that NatWest has accepted the possibility of betterment here by agreeing to pay for the entire package that is the demolition, removal and rebuild work.*

*I recognise this approach is likely to disappoint Mr P. I note Mr P's position is that he essentially wants NatWest to commit in advance to pay an open-ended bill with no indication what that might be. Mr P also wants NatWest to agree to the quotes he gets and decides to go with without quibble. However, as I have already said I don't find it is appropriate to oblige NatWest to pay an unlimited bill. Neither is it fair or reasonable to prohibit NatWest from questioning any new quotes. It follows that I have no proper basis to tell NatWest it must agree to this.*

*For all of these reasons, in the circumstances I find that as far as the demolition, removal and rebuild work goes, NatWest need only pay up to the lowest of the quotes Mr P himself obtained for the works. That is NatWest need only pay up to the £39,648 set out in the lowest of the quotes I've seen.*

*It may be that there is an internal accounting or administrative reason that means NatWest can only make payments to the supplier directly, I have seen this before. Therefore, I leave it to NatWest to decide if it will pay Mr P or the contractor directly. In any event, NatWest need only make such payment(s) when provided with invoice(s) from the contractor. I note Mr P wanted the payments to come to him directly he suggested this might be best for logistical reasons in relation to the contractor. Whilst I can see where he is coming from with this, I think the contractor will be satisfied provided the payments are made promptly by NatWest and I see no reason why this should not be the case.*

*As far as I can see under the contract with C, Mr P had to pay for the porcelain tiles and the astro-turf. For the avoidance of doubt please might Mr P provide copies of the invoices showing how much he paid for these items. I am not sure we currently have these because one of the invoices I have seen seems to be for bedroom carpet. Once Mr P provides these invoices I find that it is fair and reasonable that NatWest reimburse Mr P for these costs with interest. It does not appear that either of these items can be re-used. Therefore these are losses that flow from the breach of contract. I have no proper basis to ask NatWest to refund Mr P for the current market value of these items as this is not the loss he experienced due to the breach of contract.*

*Mr P has tried to move matters along by providing quotes for the demolition, removal and rebuild work. He only had to do this due to the breach of contract. Again since these losses flow from the breach I think it is fair and reasonable that NatWest reimburse him for these costs with interest.*

*I am not clear about whether Mr P wants to continue with the secondary part of his complaint. He did indicate he accepted our investigator's recommendation on this point. But his correspondence since indicates this is no longer the case. Therefore I've considered this point. I've not seen anything in NatWest's response to Mr P which persuades me it has treated Mr P in an inappropriate manner which merits an award for distress and inconvenience.*

*My provisional decision*

*My provisional decision is that NatWest Bank PLC must:*

- Pay either Mr P or the contractor (the choice of who to pay will be NatWest's) up to £39,648 in relation to the demolition, removal and rebuild work. The money need only be paid when NatWest receives invoice(s) from the contractor for the work done by the contractor.*
- On the proviso that Mr P provides NatWest with relevant invoices, NatWest must reimburse Mr P for the money he spent on the porcelain tiles and the astro-turf in relation to the contract with C. It must add interest to these sums at the rate of 8% simple per year. The interest to run from the date Mr P made the payment until the date of settlement.*
- On the proviso that Mr P provides NatWest with relevant invoices, NatWest must reimburse Mr P for the money he spent on the three reports. The sums seem to be £180, £180 and £250. It must add interest to these sums at the rate of 8% simple per year. The interest to run from the date Mr P made the payment until the date of settlement.*

*If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr P can reclaim the tax if he is able to.*

*Mr P should refer back to NatWest if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation. “*

I invited both Mr P and NatWest to respond to my provisional decision should they wish to do that. Both Mr P and NatWest sent in responses. I've summarised what they each said below.

Mr P sent in a detailed response. Mr P indicated he was willing to provide a minimum of three up-to-date quotes for the demolition, removal and rebuild work. Although he told us they'd be challenges in obtaining them. Mr P wanted a further nine weeks in order to provide the quotes. He set out a proposed timetable for how the complaint could proceed from here.

Mr P requested that some parameters be put around any queries NatWest raised about these new quotes. It appeared he was worried that NatWest might act in bad faith.

Mr P added that unless he obtained new quotes he was concerned that he might be facing a shortfall between what the works cost and how much NatWest has to pay, and he didn't consider this to be fair.

Further, Mr P did not agree that the original work could never have been properly done for £8,000 and he gave detailed reasons for saying this.

Moreover, Mr P reconfirmed that he wanted NatWest to pay him and for him to pay the contractor and he set out why. He also asked that if NatWest were going to pay the contractor then NatWest *“must pay the invoice(s) from the Contractor within the payment terms/ timeframe set out in the Contractor's invoice”*.

In addition, Mr P told us that as well as the astro-turf and the porcelain tiles he had also paid for sealant and grout. He wanted to be reimbursed for all of this. He explained that the invoice that looked like it was for bedroom carpet was for the astro-turf. The supplier had to put a location on the invoice, and it did not have an option to choose “garden”, so it chose “bedroom”. Mr P told us that he thought it was fair to ask to be reimbursed for the current market value of these items rather than for the price he actually paid as this would put him in the position he would have been in if the contract had been properly performed.

Mr P confirmed he did not wish to continue with the secondary part of his complaint.

NatWest accepted my provisional decision. It told us it preferred to pay the contractor directly and gave us the appropriate contact details for where the invoices should be sent. It also asked that the invoices I mentioned in the redress be provided promptly as the clock would be ticking re interest until it received the invoices.

### **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.

I've reviewed the 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 on the redress which I proposed in my provisional decision, so that I have been able to gain a fuller understanding of their respective positions and concerns about some elements of the proposed redress.

This has been a long-running complaint. I am satisfied that Mr P has had ample time between the time he first submitted his complaint and now to provide updated information

about the likely cost of the remedial and rebuild work. Therefore I don't agree it is appropriate at this late stage to give him further time to submit new information.

Even if I did agree that it was fair to give Mr P more time, which I don't. I'd not be able to prevent NatWest asking any questions it wanted to about the quotes. Just as Mr P would be entitled to do about information NatWest provided.

The reports I've seen about the remedial work suggest to me that some aspects of the work such as the retaining wall could never have been done properly within the original budget. Mr P disputes this and points to the fact that the original quotes all came in the same ballpark re price. However, I think the original quotes and the remedial reports do not tally in this area. In that if I accept that the remedial reports and the costings are broadly correct which I do, then this calls into question the accuracy of the original quotes. Mr P suggests the majority of the costs for the retaining wall are related to the remedial work. But the reports don't read like this to me.

I recognise that sticking to the current estimate for this remedial and rebuild work might mean Mr P may still, in theory, have more to pay once the corrective and rebuild work begins. However, I explained in my provisional decision why I thought this was fair. Nothing that Mr P has said in response has persuaded me I ought to depart from this reasoning.

I acknowledge that Mr P wants to be the one who pays the contractor not just for logistical reasons but to protect all of his potential consumer rights. But I think if I do what he asks there is a strong possibility that the payment situation will become too complicated and that is not in the best interests of either party. Moreover, Mr P will retain some consumer rights regardless of who pays. I've no reason to doubt that NatWest will pay the contractor promptly and in line with Mr P's contractual obligations and will not cause Mr P difficulties in this regard. If only because NatWest would derive no benefit from dragging its heels or causing problems between Mr P and the contractor. Therefore I am not persuaded that it is appropriate to add the amendment to the redress that Mr P asks for.

I looked at the contract between Mr P and C again, especially the "*responsibility of customer*" section. This mentions that Mr P must buy the porcelain tiles and the astro-turf but not the other items he mentions. I'm satisfied I have no proper basis to ask NatWest to reimburse him for the other items too. Moreover, if the contract had been properly performed Mr P would not have received a payment uplift to reflect the current cost of the porcelain tiles and the astro-turf. It follows I don't agree that it is fair or reasonable to order NatWest to make such a payment to Mr P.

I thank Mr P for confirming he no longer wishes to pursue the secondary part of his complaint.

NatWest has no control over when it is supplied with copies of the relevant invoices. Therefore, I understand why it wants the invoices to be sent promptly. I'm also aware that this is a long-running complaint and things have not always gone smoothly during the course of the complaint. Therefore in this instance, due to the very specific individual circumstances of this complaint, I think it is fair and reasonable to say the interest should run from the time Mr P made the payment until the date of this final decision.

### **My final decision**

My final decision is that NatWest Bank PLC must:

- Pay either Mr P or the contractor (the choice of who to pay will be NatWest's) up to £39,648 in relation to the demolition, removal and rebuild work. The money need only be paid when NatWest receives invoice(s) from the contractor for the work done by the contractor.
- On the proviso that Mr P provides NatWest with relevant invoices, NatWest must reimburse Mr P for the money he spent on the porcelain tiles and the astro-turf in relation to the contract with C. It must add interest to these sums at the rate of 8% simple per year. The interest to run from the date Mr P made the payment until the date of this final decision.
- On the proviso that Mr P provides NatWest with relevant invoices, NatWest must reimburse Mr P for the money he spent on the three reports. The sums seem to be £180, £180 and £250. It must add interest to these sums at the rate of 8% simple per year. The interest to run from the date Mr P made the payment until the date of this final decision.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr P can reclaim the tax if he is able to. Mr P should refer back to NatWest if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 16 March 2023.

Joyce Gordon  
**Ombudsman**