

The complaint

Mr P complains that National Westminster Bank Plc won't refund him for a holiday cottage rental.

What happened

In March 2023 Mr P's National Westminster Bank Plc credit card (NatWest for short) was used to part fund payment on a marketplace type website for the rental of a cottage for a week (having paid a deposit previously). Mr P paid a total of £3467 for the cottage rental. Mr P stayed at the cottage for the entire duration of the booking but pointed to lots of issues with cleanliness and safety at the cottage. So he wanted the website to refund him 75% of the booking to reflect the dirtiness and other issues with the cottage. But it refused to do so. So still unhappy with what had happened he complained to NatWest.

NatWest looked into the matter and has said it didn't consider Mr P's dispute should be successful through Section 75 of the Consumer Credit Act 1974 (CCA for short) or through the chargeback process. So that's why it didn't refund him.

Mr P didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter. Overall, she didn't think NatWest had acted unfairly by declining Mr P's request for a refund because she decided that Section 75 didn't apply here. Mr P didn't agree. So the complaint has been passed to me to decide.

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 should make very clear that this decision is not about the house owner, or the website used here, which aren't financial services providers and don't fall within my remit regarding either chargeback or Section 75. Whatever the issues there maybe with the website or the seller, and just because Mr P says he has lost out here, it doesn't necessarily follow that NatWest has treated Mr P unfairly or that it should refund him. And this decision is solely about how NatWest treated Mr P. I hope this point is clear.

chargeback

There's no dispute that Mr P's NatWest card was used here. So I don't think NatWest did anything wrong by charging this transaction to his account at the point of purchase.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr P does here, NatWest (as the card issuer) can attempt to go through a chargeback process. Chargeback is a voluntary process which is decided simply on the terms of the dispute within the rules of the card scheme (not managed by NatWest). I don't think NatWest could've challenged the payment on the basis Mr P didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

The chargeback process is a straightforward dispute process between card issuers and merchants that is managed by the card scheme and is based solely on the rules of the card scheme. Here NatWest didn't raise a chargeback because it felt that as the service had been used fully such a chargeback didn't have a reasonable prospect of success. I've considered the relevant chargeback codes available here and considering those along with the information here and particularly the website's position on the matter. I'm not persuaded that NatWest has treated Mr P unfairly here. I say this because considering the chargeback process and the rules of that process I'm not persuaded on balance that had NatWest pursued a chargeback vehemently that it would have been successful. I say this due to the subjective nature of Mr P's dispute and that he'd sought a 75% refund which considering the evidence available was unlikely considering that evidence provided and that he'd made full use of the service by staying the entire duration of the booking. So I don't think Mr P has lost out because NatWest didn't raise a chargeback.

Mr P points to a decision issued by a colleague regarding chargeback to support his position. Firstly I'm not bound by other decisions but look at each case on their individual merits. So I'm not persuaded that this makes a difference here. And for the sake of completeness I should point out that particular decision was in relation to a package holiday where there was clearly substantial change to the contract due to the pandemic and it was agreed between the parties that what had been offered wasn't delivered. I've not seen the cottage owner agreeing the facts of this matter with Mr P here. In fact there clearly is significant disagreement about the cottage here. So this argument isn't persuasive in any event.

The CCA

The CCA introduced a regime of connected lender liability under Section 75 that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier").

A business such as NatWest can only be held responsible under S75 of the CCA if certain requirements are met *and* if there is breach of contract or misrepresentation of the contract and if there is that it also means that Mr P has lost out as a result. Our Investigator concluded that one of the requirements for a S75 claim wasn't in place, so NatWest didn't have to consider the matter further. And even if breach or misrepresentation was made out (which Mr P argues) this doesn't make a difference because Mr P's claim under s75 didn't meet the qualifying criteria. In short the Investigator concluded that this S75 claim fails before getting to the point of considering the question of whether the service of the cottage provision was provided with reasonable skill and care.

The terms and conditions

In response to the assessments of the Investigator Mr P has argued that the website are responsible for the cottage and cleanliness thereof. I've looked at the terms and conditions and I should note some important factors. The contract Mr P has with the website makes clear who the parties are and that there are actually two contracts being agreed. The 'rental'

contract which here is between Mr P and the owner of the property. The second is the 'booking' contract which is between Mr P and the website. The website goes on to say:

"Our obligations to you are limited to those in connection with the Booking Services and (our) Other Services. Accordingly, we accept no liability for any defects or unavailability of Rental Services, the Property or any other problems with your holiday. Your rights under these Booking Terms and the Rental Contract for issues with Rental Services, a Property or your holiday are only against the Owner (unless we have done something wrong in relation to the Booking Services or (our) Other Services which caused that problem). Also, we accept no responsibility for the acts or omissions of third parties who provide Third Party Other Services to you when your contract is with the relevant third party and not ourselves."

So this makes very clear that problems with the cottage that Mr P points to are covered by the contract between Mr P and the cottage owner and that the website isn't liable for these issues.

I appreciate that the articulation of separate contracts in the one document might be not as clear as it could have been. And I note that Mr P points to parts of the terms and conditions which notes the owner of the cottage would accurately describe the property and also ensure it is 'clean, properly maintained and in good repair' (term 8 and subsections thereof). But this is in reference to the contract between Mr P and the cottage owner and is clearly described as such under the heading "an owner's responsibilities" and thus doesn't form part of the contract between Mr P and the website.

Mr P points to the website acting as agent for the owner meaning that it takes on the responsibility of the owner as well. There may be scenarios, broadly speaking, where this might be the case. But it clearly it isn't the case in this case where Mr P has agreed a contract with the website which specifically makes clear the website isn't responsible for any failings by the property owner. The fact that the website has a contract with owners and acts as agent for various services doesn't make a difference to Mr P's claim re the dirtiness of the cottage. This is because firstly Mr P isn't party to that contract between the website and the owner and for reasons I'll explain NatWest isn't responsible for it either. Secondly because there is that contract in place (website-owner contract) it doesn't change the terms of the contract Mr P agreed with the website. And it would clearly be unfair on NatWest if Mr P tried to leverage a contract which NatWest could not have contemplated against it particularly when it could have a potentially different outcome to those terms Mr P did specifically agree to in the contract between him and the website which NatWest did fund.

And in light of the High Court case of *Steiner v National Westminster Bank plc* [2022] EWHC 2519 ('the Steiner case'), I'm not persuaded there was a DCS Agreement here between the parties of Mr P, NatWest, and the cottage owner. And as that means that NatWest didn't and doesn't have any responsibility for the s75 claim in question (i.e. around the cleanliness and safety of the cottage), I don't think it needs to do anything to put things right in this complaint. I say so for these following reasons.

A DCS Agreement is defined by Section 12(b) of the CCA as "*a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier [...]*".

Section 11(1)(b) of the CCA says that a restricted-use credit agreement is a regulated credit agreement used to "*finance a transaction between the debtor and a person (the 'supplier') other than the creditor [...]*" and "*restricted-use credit*" shall be construed accordingly."

In the Steiner case, the High Court looked at the application of Sections 56, 75 and 140A of the CCA and considered the circumstances in which the necessary arrangement can be said

to exist. The central question in Steiner is not whether "arrangements" existed between the creditor and the timeshare provider when the Timeshare was sold. Instead, the question posed by Section 12(b) is whether the relevant credit agreement was made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between it and the timeshare provider.

In other words, the starting point for the purposes of Section 12(b) is the date that NatWest and Mr P entered into the Credit Agreement – rather than the Time of Sale of the cottage rental. Yet, in the absence of evidence to the contrary, it is difficult to argue that NatWest issued Mr P with his credit card and entered into the Credit Agreement relating to that card under, or in contemplation of, any arrangements other than the relevant card network here.

The key issue in this case is that although Mr P's card financed the transaction to pay the website it is the contract Mr P has with the owner which is the centre of his s75 claim-that the cottage rental service wasn't brought with reasonable skill and care.

And while there may well have been arrangements between NatWest and the website (that is through membership of the card network here) and arrangements between Mr P and the cottage owner (similar to that as the High Court recognised in Steiner) the natural and ordinary meaning of Section 12(b) does not extend to saying that NatWest entered into the Credit Agreement with Mr L under both the relevant card network and the contract between Mr P and the cottage owner. Nor can Section 12(b) be interpreted as saying that NatWest had entered into the Credit Agreement with Mr P in contemplation of the contract for the supply of the cottage between Mr P and the cottage owner (or in contemplation of any other arrangements which parties to the relevant card network might have had with third parties).

I recognise that the judgment in Office of Fair Trading v Lloyds TSB Bank Plc [2007] QB 1 ('OFT v Lloyds TSB') by the Court of Appeal is authority for the proposition that there can be arrangements between a creditor and a supplier without there being a direct contract between them. But a significant feature of the factual situation addressed in OFT v Lloyds TSB was that all parties to the card network in question in that case were party to the same network, whether or not they had direct contractual relations with one another. That network, which had rules, constituted 'arrangements' between all of its members. So, it was said by the High Court in the Steiner case that OFT v Lloyds TSB isn't authority for the proposition that, if there are arrangements between a creditor and X, and if there are also arrangements between X and a supplier, then it necessarily follows that there are arrangements between the creditor and the supplier.

Here clearly Mr P had arrangements with the website (who he paid directly) and also a contract with the cottage owner which wasn't funded by Mr P directly through his NatWest card but through some separate payment arrangement between the website and the cottage owner. And NatWest couldn't have contemplated, nor do I think it fair for it be held responsible for a contract between Mr P and the cottage owner which it couldn't have contemplated or have considered to be within pre-existing arrangements that NatWest had.

Overall, therefore, given the facts and circumstances of this complaint, I don't think it would be fair or reasonable to find that NatWest was and is responsible for the cottage owners' alleged failings at the Time of Sale when the law doesn't impose such a liability on NatWest considering the evident absence of a relevant connection between it and the cottage owner.

I'm satisfied that the requirement for a DCS agreement isn't met here due to the contractual inter-relationship of the various parties here. And accordingly whether or not the cottage was clean or safe becomes irrelevant as the pre-requisites for a successful s75 claim against NatWest are not met.

I do appreciate that this isn't the decision Mr P wants to read. And I'm sorry to hear about what happened. But I don't think NatWest treated him unfairly. And just because Mr P has lost out doesn't mean it's fair for NatWest to refund him. It would only be fair for it to refund him if it had done something wrong. And I'm satisfied Mr P hasn't lost out due to what NatWest did. So it has nothing further to do here. For the above reasons Mr P's arguments are not persuasive by some margin and his complaint therefore does not succeed.

My final decision

For the reasons set out above, I do not uphold the complaint against National Westminster Bank Plc. It has nothing further to do here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 3 May 2024.

Rod Glyn-Thomas
Ombudsman