

The complaint

Mr G complains about the way National Westminster Bank Plc handled a dispute he raised with it ('NatWest').

What happened

The parties are familiar with the background of this complaint – so I will only cover it briefly here. It reflects my informal remit.

Mr G says he bought a car using his NatWest credit card and would like a refund for it because it went wrong shortly after he bought it.

Mr G raised a claim with NatWest, and it considered things under Section 75 of the Consumer Credit Act 1974 ('Section 75'). However, it said there wasn't enough evidence for it to uphold the claim. Namely, that Mr G had not provided an invoice for the purchase.

Mr G complained about this outcome and brought that complaint to this service when NatWest would not change its stance.

Our investigator didn't uphold the case so it has come to me to make a final decision on.

I issued a provisional decision not upholding the complaint which says:

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

I won't be commenting on all the evidence and submissions of the parties, only what I consider to be key. This reflects my informal remit.

It is important to note here that NatWest is not the supplier of the car. So when considering if it acted fairly, I have to keep in mind its role as a provider of financial services. With that in mind I consider the chargeback card scheme and Section 75 particularly relevant when deciding if NatWest should have done more in the way it dealt with the dispute.

From what I can see:

Mr G used his NatWest card to pay a Limited Company I will refer to as 'C' £295. Mr G says this is what he paid to reserve the car.

A few days later Mr G used his NatWest debit card to pay a different Limited Company £4,800 who I will refer to as 'K'.

Mr G also used his NatWest bank account to pay 'K' £20,000 and £706.

With this in mind I will now move on to consider NatWest's claim handling in respect of Section 75 and chargeback.

Section 75

In certain circumstances Section 75 allows Mr G to make a 'like claim' against NatWest for breach of contract or misrepresentation by a supplier whom he has an agreement with for the supply of goods and/or services, and which he has paid for using his credit card.

There are certain requirements for a valid Section 75 claim, relating to things such as the cash price of the item – and the relationship of the parties to the agreement (also known as the 'debtor-creditor-supplier' agreement).

In not upholding the Section 75 claim NatWest has focused on not having an invoice for the sale and Mr G being unable to provide one despite requests. I accept that having an invoice is often a key piece of information which helps to determine the contracting parties and other information like the price, features of the deal and payment arrangements. However, that is not to say that other circumstantial information will not be useful or even valid and there is an argument to say that NatWest could have done more in exploring the facts here rather than simply focusing on Mr G being unable to provide the invoice.

Mr G has sent us some more information about the purchase including insurance and registration documents and warranty information to go alongside the chat transcripts he appears to have had with the dealer. I have also asked Mr G some extra questions but despite an extended deadline have had no answers to these. So I am satisfied that even if NatWest had asked for more clarity on the situation it likely would have had access to the information available to me to date.

With this in mind I am not persuaded things are sufficiently clear in respect of:

- 1. - whether Mr G has a valid Section 75 claim against NatWest*
- 2. - whether there is a clear breach of contract by the supplier in any event*

I will deal with each of these points in turn.

In respect of point 1, firstly, the total cash price of the car isn't clear from the evidence I have seen (no advert or other information to show price) and Section 75 doesn't apply to goods priced over £30,000. I think the circumstantial evidence indicates it is unlikely the car costs more than this but it appears fairly close. The lack of clarity here is not in my mind a fundamental issue but certainly adds to the cumulative sense of uncertainty presented to NatWest about the nature of the deal.

More problematic in my view is the lack of clarity around the 'debtor-creditor-supplier' agreement here. Mr G's credit card payment was made to C but the bulk of the payments for the car were apparently made to K. The relationship between C and K is not clear to me but from looking at Companies House I can see that they are separate legal entities with different directors. From the information I have I am not satisfied that C+K are 'associates' as defined by the Consumer Credit Act 1974 (which would mean that for the purposes of Section 75 they are essentially considered as one entity).

So in order to determine that Mr G has a valid claim against NatWest for the supply of the car I would need to be persuaded he had a legal agreement with C for the supply of the car – and not K. As that is who the credit card payment went to.

NatWest has raised questions as to whether it was Mr G who contracted with the dealer in any event– and while cumulatively it does add to the sense of doubt about the facts here – I think from the alternative documents Mr G has provided (including insurance/registration documents and chats with the dealer) it appears that he is likely to have been the one who contracted here.

For me the key issue is that the bulk of Mr G's money went to K – a completely separate legal entity to C. Which would reasonably indicate it was the entity he contracted with for the car and not C.

Some evidence also indicates C's role was potentially as a credit broker (like its full name). Or that it took a credit card payment for an initial introductory service of some-kind but didn't do more. There is also some information from the texts Mr G sent that indicate the dealer hadn't received any money from Mr G until after he purchased the car which raises further questions over the nature of that initial payment to C.

I note C is named as the dealer on the warranty document Mr G has provided which supports an argument that it could have contracted with Mr G for the car. But I still think there are some fair questions about the arrangement here and chain of events that NatWest would have reasonably expected further clarity on before considering the claim further.

In any event, even if it were clear that Mr G was contracting with C for the supply of the car I think there is insufficient information to establish a breach of contract or misrepresentation under Section 75.

Essentially, to establish a breach of contract here Mr G would have to persuasively show NatWest that the car was of 'unsatisfactory quality' as specified by the Consumer Rights Act 2015.

The Consumer Rights Act 2015 says the quality of goods are satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and mileage at the time of sale and the vehicle's history.

The Consumer Rights Act 2015 says the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of goods.

It appears Mr G was supplied with a second-hand car about 7 years old and with high mileage (in excess of 90,000 miles) where the risk of potentially costly repairs is higher than a newer less road-worn car. There are also several variables that can cause a car to go wrong other than an inherent fault (such as accident, driver error or usually expected wear and tear).

It appears that within the first 30 days of ownership Mr G tried to reject the car. He has said to the dealer in transcripts that the car broke down and it requires repairs costing around £26,000 - but I don't see where Mr G has provided NatWest or this service any copies of expert reports or job sheets confirming what fault occurred and a likely cause (along with other important information like the mileage at point of failure and the credentials of the examiner). I think the text chats with the dealer alone are not sufficient to establish a likely breach of contract here.

All things considered I don't think there was sufficient evidence available to NatWest in order for it to fairly uphold the Section 75 claim at the time.

Chargeback

The chargeback scheme is another way NatWest could have potentially assisted Mr G with recovering his money. A chargeback is not guaranteed to work but it can be good practice to

raise one where there is a reasonable prospect of success.

In this sort of situation there is a chargeback reason code relating to defective goods which NatWest might have pursued.

I am unclear as to whether or not NatWest did use the chargeback scheme to attempt to recover the amounts that Mr G had spent on his debit and credit cards. Mr G did say that it refunded him his initial payment – but I am not sure about the £4,800 he spent on the debit card after that.

However, and in any event, I consider that NatWest didn't act unfairly in not progressing a chargeback here as the prospect of a successful chargeback was low based on similar factors to those I have already identified in respect of identifying a breach of contract. Namely, that there appeared to be little independent information available to NatWest diagnosing the issue with the car and putting it down to an inherent fault rather than an alternative issue. I don't think the chat transcripts would likely be sufficient here.

For the reasons given I am unable to fairly say that NatWest should have gone on to refund Mr G.

NatWest accepted my provisional decision. On the deadline for responses given in my provisional decision Mr G said he had been away and would provide further information that day – but to date he has not and we are now well past the deadline given in my provisional 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.

I think Mr G has had a reasonable opportunity to provide further information to this service to support his case. But as he has not done so my decision is based on the information I have on the file.

Neither party has submitted any new information that makes me reconsider my provisional findings (as copied above). And I still think they are fair and reasonable. So I make my final decision on the same basis.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 May 2024.

Mark Lancod
Ombudsman