

The complaint

Mr S complains about how National Westminster Bank Plc ('NatWest') handled a claim he made to it.

What happened

The parties are familiar with the background details of this complaint – so I will only summarise them briefly. It reflects my informal remit.

In summary, Mr S used his NatWest credit card to pay for short term accommodation. However, he says there were numerous problems with the agreement for the property (including misrepresentation and breach of contract) so he approached NatWest to raise a dispute and try to recover some of the money paid.

NatWest looked at things under Section 75 of the Consumer Credit Act 1974 ('Section 75') but it did not uphold the claim. It also raised a chargeback but discontinued it once it was defended by the merchant.

Mr S is not happy with this and wants NatWest to accept the validity of his claim and refund the money claimed. He raised a complaint about the claim which NatWest did not uphold.

Our investigator looked at the complaint about the claim and did not uphold it.

Mr S has asked for the matter to be looked at by an ombudsman.

I issued a provisional decision which said:

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

When I received the file I requested more information from both parties – which resulted in some new information coming to light. I have considered that in coming to my findings here along with the information that was previously available. While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it simply reflects my informal remit.

I am sorry to hear about the issues with the property and the impact on Mr S's son who was using it. It is important to note here that NatWest is not a letting agent or a landlord. In deciding if it has acted fairly I am looking at its role as a provider of financial services. In that respect I consider that Section 75 and the chargeback scheme are particularly relevant here as they provide ways NatWest can assist Mr S with the dispute. So it is these I have focused on in deciding if NatWest needs to do more here.

Section 75

In certain situations Mr S can make a 'like claim' against NatWest for a breach of contract or misrepresentation by a provider of goods or services financed by his credit card.

However, there are certain technical requirements for Section 75 to apply. This could relate to things such as the cash price of goods or services, or the nature of the agreement between the parties.

Mr S is only able to claim against NatWest via Section 75 for an agreement for goods or services that is both financed by the credit card, and also that he is a contracting party to. This is referred to in the Consumer Credit Act 1974 as the 'debtor-creditor-supplier' agreement.

In this case I note Mr S's dispute is essentially a landlord and tenant dispute. The problem with a Section 75 claim here is twofold. One is that his credit card payment was not made to the landlord providing the accommodation. The second is that the signed contractual tenancy agreement with the landlord is not with Mr S – but with his son and a third party who were staying at the property.

I note that Mr S's credit card payment went to a letting agent. The agent also has certain contractual responsibilities in respect of its role marketing a property and providing intermediary services on behalf of the landlord. I note that Mr S has recently provided the signed contract with the letting agent – but this is not signed by Mr S, but with his family member who was occupying the property. So I don't think Mr S has a contractual agreement with the letting agent either.

Essentially, despite providing the funding, Mr S isn't a contracting party here in respect of the agreement for the short term let. I know Mr S says he was very involved in the negotiations and booking for the let and that he has been driving the complaints process himself– but I don't think that is sufficient to say he has a contractual relationship in respect of any agreement for tenancy services here.

Mr S has suggested he might still be able to make a claim for misrepresentation – but I don't agree with that because he has not entered a contract here based on any statements made by any supplier. Nor do I agree that any comments made by the letting agent during a chargeback process in themselves would serve to make Mr S a contracting party here. But in any event I note in its defence the agent refers to 'the tenants' having signed the contract (and therefore being liable for the rental payments), and Mr S cannot fairly be described as a tenant in the particular circumstances here.

Because I am not satisfied Mr S has a claim against the landlord or letting agent in court for breach or misrepresentation, it follows that this means he isn't able to claim against NatWest either.

Because I don't think Mr S has a Section 75 claim against NatWest in respect of the agreements for tenancy services I am unable to fairly conclude it needs to do more in respect of said claim for breach of contract or misrepresentation by either the landlord or the letting agent.

Chargeback

Chargeback is a way NatWest can dispute payments made on Mr S's credit card. However, chargeback is limited by the scheme rules and is not guaranteed to succeed.

In deciding what is fair and reasonable I have kept in mind the applicable chargeback scheme rules which I understand are MasterCard in this case.

Even though chargeback is not compulsory and does not make NatWest legally responsible for the actions of a merchant (like Section 75), it is often good practice to raise a chargeback

where a dispute is raised by a consumer and there is a reasonable prospect of success.

I can see here that NatWest did raise a chargeback under the reason code '53' relating to goods or services not being as described or defective. On the face of it I don't think this reason code was an unreasonable one to use. However, it was defended by the merchant which took the payment (the letting agent). Essentially the defence was that the tenancy agreement had been signed (a copy was provided) and it means that the customer is liable for rental payments.

I don't necessarily think the defence addressed the reason code which related to services not being as described/defective. However, I also don't think NatWest acted unfairly in not taking the chargeback further at this stage. I say this because:

- Chargeback lends itself to more straightforward single issue disputes – here there were multiple allegations made in relation to a complex landlord tenant dispute including service issues from the agent. And those allegations are wide ranging including defective services, services not supplied, negligence, safety issues, voided insurance and other miscellaneous issues such as the number of contractor visits/no-shows.*
- Under the chargeback scheme only refunds can be claimed in relation to the reason code specified up to the amount paid on the card – there is no mechanism for general compensation/damages or consequential losses (ways of putting things right that appear to be part of the claim here).*
- The case is not clear cut and is disputed on each side and it is unlikely that the card scheme (had the matter reached arbitration) would be taking into account or have expertise in the legislation which Mr S quoted in respect of the obligations of a landlord to a tenant – nor is it likely to be able to cross examine or summon witnesses or expert evidence in the same way a court would.*
- At the time the chargeback was raised there was ongoing attempts to resolve the case with The Property Ombudsman ('TPO') against the agent - the chargeback rules require parties to try and resolve things first between themselves so it seems that this ongoing process and the real risk of double recovery would have contributed to the likelihood of the chargeback not succeeding.*

NatWest has given its own reason for discontinuing the chargeback (the service was used) but I am not convinced under the scheme rules that is a valid defence to this reason code. However, for the reasons I have given above I don't think it acted unfairly in not taking the chargeback further. So I won't be directing it to issue any refunds to Mr S in relation to this.

I also note that in addition to the TPO case (which has awarded compensation) there is also an ongoing court case due for a hearing later this year. Even if I were able to conclude differently in my findings above I also think these other routes present a risk of double recovery and difficulties in me making a direction for NatWest to fairly refund funds in any event.

My provisional decision

I don't uphold this case.

NatWest accepted my decision and Mr S did not respond.

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.

Neither party has given me cause to change my provisional findings. So my final decision is based on said provisional findings (as copied above) which I still consider fair and reasonable.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 May 2024.

Mark Lancod
Ombudsman