

The complaint

Mr A complains about how Nationwide Building Society handled his dispute.

What happened

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

Mr A raised a claim against Nationwide in respect of legal services he paid for using his Nationwide credit card. Mr A says that because of the failure of the law firm he lost the claim in the court and a judgement was awarded against him. He wants the legal fees refunded from the law firm he paid as well as consequential losses in respect of the alleged failings by this firm including for the judgement made against him of £11,000 plus interest. He also wants to be awarded compensation for the pain and suffering which resulted from the law firm's actions.

In summary, Mr A says the law firm he paid using his Nationwide credit card

- mismanaged his case including not using the correct procedures and not informing him that the claimant was being represented on a no win no fee basis – these issues, amongst others, were ultimately detrimental to the outcome of his case
- failed to provide the services with reasonable care and skill
- lied to him and the court throughout the legal process
- failed to meet deadlines set by the court

Nationwide did not attempt a chargeback because it said the timescales by the Visa chargeback card scheme had not been met. It then considered the claim in respect of section 75 of the Consumer Credit Act 1974 ('section 75'). However, it declined the claim as it said it was unable to conclude that the supplier was in breach of contract.

Our investigator thought that Nationwide had not acted unreasonably in its handling of the claim. But Mr A disagreed and asked for the matter to be considered again by an ombudsman for a final 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.

To begin with, I want to start by saying I am sorry to hear about Mr A's difficulties with the law firm he instructed. I appreciate this has been a stressful time for him. I want to reassure him that while I might not comment on everything (only what I consider key) I've carefully reviewed all the evidence and submissions relating to this matter. In deciding if Nationwide has acted fairly, I am looking at its role as a provider of financial services in responding to the issue he brought to it. In that respect, I consider section 75 and the chargeback scheme are particularly relevant here as they provide ways the financial business can assist with a dispute. So, it is these I have focused on in deciding if Nationwide needs to fairly do more here.

Chargeback

Chargeback is a card protection scheme which is governed by the rules of a particular card scheme (in this case Visa). It is not guaranteed to recover money, but in many cases, it will be good practice to at least attempt a chargeback. There are certain criteria that need to be met involved in raising a chargeback. Under Visa's rules applicable to this case - which I think would likely be 'not as described or defective merchandise/services' - a chargeback must be requested within (i) 120 days of the transaction processing date or (ii) within 120 days of the last date the cardholder expected to receive the goods or services. But in either case, it cannot exceed 540 days from the transaction processing date.

From what I can see, Nationwide based the transaction date on the payment to the law firm Mr H made on 17 September 2021. And he raised his claim with Nationwide on 11 January 2024. Mr A when responding to our investigator's view said that he did raise the chargeback claim over the phone with Nationwide earlier than this date. But beyond his testimony, Mr A hasn't been able to provide any persuasive evidence to support he raised a chargeback to Nationwide before January 2024.

Mr H has also told us the September 2021 payment was only one of three payments to the law firm. I can see from his Nationwide credit card statements that Mr A paid the law firm £6,414 on 17 September 2021; £3,500 on 10 June 2022; and £4,000 on 5 July 2022. When our investigator raised the issue of the payments made in June and July 2022 to Nationwide, it said that as Mr A had not disagreed with its acknowledgement letter regarding his claim which only referred to the September 2021 payment, it only considered this latter payment. But looking at Mr H's credit card statements, which were clearly readily available to Nationwide, I think it should have considered the later transaction dates of 10 June and 5 July 2022 as well as the one it did consider of 17 September 2021.

But even if Nationwide had looked at these other dates, I don't think this would have changed the outcome. I say this because the later transaction dates, still wouldn't have met the Visa timescales. Mr A raised the chargeback on 11 January 2024. This was 556 days from the 5 July 2022 and 581 days from 10 June 2022. So, in either case, this did not meet the Visa timescale of 120 days from the transaction date. And didn't meet the 'long stop' date of 540 days. So, I think Nationwide has acted fairly and reasonably here.

Finally, in terms of the chargeback claim, Mr A told Nationwide at the start that he had received a refund from another credit card provider. I can see from system notes that Nationwide did ask for more information about this at the start of Mr A's claim. It is unclear what, if any documents, Mr A sent to Nationwide about his claim against another provider. Mr A has since provided us with bank statements showing the refunds coming from another credit card provider and confirmed these were chargeback payments. Even if I were to accept that Mr A had sent these statements to Nationwide, I do not think this changes anything in terms of its handling of the chargeback request he referred to it.

Section 75

In certain circumstances, section 75 can make a financial business liable for a breach of contract or misrepresentation in respect of an agreement a consumer has with a supplier of goods or services which they also financed using their card. There are certain criteria that need to be met for a section 75 claim to be valid – which might relate to the way something is priced or the particular parties to the agreement for the goods or services.

I should start by noting that under section 75, a claim must relate to an item that costs more than £100 and no more than £30,000. But Mr A told our investigator during a call that the contract he had with the law firm was for £45,000. I also note from the credit card and bank

statements, which show the payments Mr A made to the law firm using his Nationwide credit card, and show the refunds he received from another credit card provider, that the law firm was paid a total of £30,613. We asked Mr A to clarify his earlier comments about the costs of the contract. He said that whilst he was told at the start of the legal process that the cost may be in the region of £45,000, this was not a fixed fee. And he confirmed there was no fixed fee contract with the law firm.

This seems supported by the 'client care letter' sent to Mr A on 7 August 2020 from the law firm which says: *"Based upon the scope of work and assumptions set out above, our fee estimate for your matter is £1,000 plus VAT for reviewing the documentation and advising you on the merits of your defence and a further £3,000 plus VAT if you wish to instruct us to prepare a Defence and file this at Court."* The client care letter goes on to say that unless the law firm agreed otherwise, additional fees would be charged at an hourly rate which could range from £135 to £350 (plus VAT) depending on who carried out the work.

Given Mr A's submissions to us, along with the fees he actually paid to the law firm, which was over £30,000, it is not entirely clear whether he meets the financial limits for bringing a section 75 claim. In my view, I think it is at least arguable the hourly rate should be the 'cash price' for the purposes of section 75, which are within the financial limits. However, as this issue doesn't make a difference to the outcome here, I'll move on to consider Nationwide's response to Mr A's allegations about the law firm – and whether there was sufficient evidence for it to fairly uphold the section 75 claim in the circumstances.

Mr A has said the law firm 'misrepresented' certain things to him. A misrepresentation in the context of a section 75 claim happens when a statement of fact is made which is untrue and was relied on by the consumer in entering the contract. I cannot see this applies here. Mr A has not claimed the law firm he instructed misrepresented itself prior to him entering into the contract – rather he says the law firm told him certain things throughout the legal process which he says turned out not to be true and therefore, misleading. So, I do not think it is likely a misrepresentation by the law firm happened for which Nationwide could be held liable.

Moving on to whether there was likely to be a breach of contract, amongst other things, I'll consider the requirement for a service provider to act with 'reasonable care and skill' as implied by the Consumer Rights Act 2015. When determining reasonable care and skill there is no strict definition set out in the law. However, it is generally taken to be the level of reasonable care and skill that would be expected in a particular profession or industry (for example based on agreed codes of practice). Further, reasonable care and skill is not focused on the results achieved by a service but the manner in which that service was carried out.

With all this in mind, it is relevant to note that this is not a straightforward dispute. Legal services are highly skilled, complex, and regulated by specific professional conduct rules. There are specific regulatory and Alternative Dispute Resolution ('ADR') bodies set up to deal with disputes about legal services for that reason. The Legal Ombudsman, which Mr A has already submitted a complaint to about the law firm, is the relevant ADR scheme for legal service disputes. However, while all of this does not mean that Mr A is unable to make a claim against Nationwide under section 75, it does go on to demonstrate the complexity of said claim. It also informs the fairness of Nationwide's actions in the circumstances.

When considering the fairness of Nationwide's actions, I think this complexity is all relevant to how reasonable its decision was not to accept liability based on the evidence Mr A had presented to it at the time. Particularly noting:

- Nationwide did write to the law firm on several occasions asking for its side of the story. But the law firm didn't provide a substantive response despite being given a reasonable summary of what the complaint was about and also having received a

complaint from Mr A to which it had already responded. Overall, I think Nationwide made reasonable efforts to engage with the law firm before making its decision.

- Beyond Mr A's testimony, I can't see he presented Nationwide with persuasive independent evidence (such as that from a specialist body) to support a claim of breach of contract by the law firm.
- Nationwide would not have been able to cross examine or summon witnesses in the same way a court might be able to in order to establish liability.
- Mr A has already made a complaint to the Legal Ombudsman about the law firm – and from the documents he provided to Nationwide, it was noted that even this ADR scheme, which specialises in reviewing complaints about law firms, and the services they provide, didn't think there was sufficient evidence to base a decision on. So, I think this shows the level of complexity even from a body which is tasked with looking at these types of complaints. And given there is still an ongoing case with the Legal Ombudsman, I think that it also opens up the possibility of there being double recovery if Mr A's case were to be upheld by the relevant ADR scheme.

Mr A has indicated that some of the matters he raised was not complex. In particular, he says it should have been obvious to the law firm that it should have used the 'multi-track' procedure rather than the 'fast-track' procedure. My understanding of this process is it isn't straightforward. But even if I am wrong about that, overall, I think it is difficult to separate these issues out from what is fundamentally a complex claim for breach of contract involving numerous allegations of professional malpractice. In the circumstances, I do not think it would be unreasonable for Nationwide to treat the matters as inextricably linked and make a decision to refuse the claim as a whole based on the evidence presented at the time.

On that last note, I can see Mr A provided our investigator with various documents which he said was provided to Nationwide. These included court documents and emails to and from the claimant's law firm and Mr A's law firm. But I cannot see that these documents were part of the claim documents provided to us by Nationwide. And Nationwide said this was all it received from Mr A. If Mr A did not provide Nationwide with particular documents, I can't say it acted unfairly for not considering them when determining what, if any, liability it had for a breach of contract.

However, I can see Nationwide did record on its system that it received more documents from Mr A to support his claim after it declined it. I also note there were problems with an email address one of its agents gave Mr A. So, it is possible that Mr A sent the documents he provided to us to Nationwide. But, if anything, I think the additional documents he has provided to us underlines the complexity of the issues in this case. For example, I can see one document shows a court judgement which shows the court reviewed the procedural issues Mr A raised and dismissed his complaint 'without merit'. So, I think it is likely if Nationwide had reviewed the documents in question, it would have reached the decision it ultimately did which was to decline his claim. This means that, even if I accept Nationwide hadn't done everything it should've done in terms of reviewing the further documents Mr A submitted, I don't consider he lost out because of it.

For all these reasons, I do not think Nationwide acted unfairly or unreasonably in the way it handled Mr A's section 75 claim.

Customer service issues

Mr A complains about communication issues with Nationwide including its agents not returning calls which he says has caused him stress. Further, as I have indicated above there was a problem with Nationwide's email address – this appears to have been because the email address was in the process of being decommissioned. So, when Mr A sent in further evidence after

Nationwide had made its decision to decline his claim, he had to call on several occasions to check on whether the documents had been received.

I understand this situation has been very stressful for Mr A. And I appreciate this has been a very difficult time for him which he says has impacted on his mental health. I'm of course sorry to hear this is the case. But as far as Nationwide's role is concerned, I think overall, it has acted fairly and reasonably in its communications with Mr A using a variety of ways to communicate with him. And from listening to what Mr A told us much of the stress he has experienced has been due to the ongoing issues related to the court case rather than the actions of Nationwide.

That said, I can see Nationwide made a mistake with an email address which meant Mr A had to chase this up with its agents on several occasions and in the end, he went into a branch to ensure his documents were submitted correctly. Nationwide has offered Mr A £75 which I understand it has already paid although from what I can hear, Mr A has attempted to return it. I can see it has offered a further £50. Given this was a one-off mistake and didn't detrimentally impact on the outcome of Mr A's claim, I think a total of £125 fairly and reasonably compensates him for the distress and inconvenience caused by Nationwide's error.

My final decision

For the reasons I've set out above, I think the compensation Nationwide Building Society has offered Mr A for the distress and inconvenience it caused is fair and reasonable. Nationwide Building Society should pay Mr A a total of £125, deducting anything it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 April 2025.

Yolande Mcleod
Ombudsman