

The complaint

Mr V complains that Nationwide Building Society declined his claim under section 75 of the Consumer Credit Act 1974 and under the Visa chargeback scheme.

What happened

In May 2021 the High Court gave judgment against Mr V for nearly £30,000. By April 2024 the amount he owed the judgment creditor had risen (by the addition of interest and fees) to more than £44,000.

In April 2024 the High Court issued a combined Writ of Control, Writ of Possession and Writ of Delivery. That was, in effect, an instruction to bailiffs to enforce the judgment.

When contacted by the bailiffs, Mr V paid the judgment. He paid £8,000 using his Nationwide credit card and the balance by bank transfer and debit card.

Subsequently, Mr V took legal advice. He says he was advised that the bailiffs should not have enforced the judgment, since certain administrative requirements had not been met. He therefore sought reimbursement from Nationwide under section 75 or chargeback.

Nationwide said that the credit card payment did not meet the necessary requirements under section 75 or under chargeback and so declined the claim. Mr V complained about that decision and referred the matter to this service.

One of our investigators considered what had happened and issued a preliminary assessment. She did not recommend that the complaint be upheld. Mr V did not accept that assessment and asked that an ombudsman review the case.

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.

Section 75

Section 75 says:

75 Liability of creditor for breaches by supplier.

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

...

(3) Subsection (1) does not apply to a claim —

(a) under a non-commercial agreement,

(b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ...

An essential element of a claim under section 75 is that the debtor (here, Mr V) has a claim for breach of contract or misrepresentation. Mr V did not, however, make the credit card payment to finance a contract. He didn't have a contract with the bailiffs and cannot have had a claim for a breach of one. He made the payment because the bailiffs were enforcing a judgment on the instruction of the Court.

Mr V has suggested the bailiffs were guilty of misrepresentation, because they misled him into believing he had to pay the judgment. In law, however, a misrepresentation is a statement of fact or law, made by one party to a contract, which is not correct and which induces the other party into entering into the contract. As I have explained, however, Mr V did not have a contract with the bailiffs. It follows that he cannot have a claim in misrepresentation either and that section 75 cannot apply.

For the sake of completeness, section 75A (which has different financial limits) cannot apply either, for the same reasons.

Chargeback

Where goods or services are paid for with a debit or credit card and a dispute arises, it is often possible to resolve that dispute through the chargeback process. Chargeback is a scheme run by the card schemes (in this case, Visa). A card issuer (here, Nationwide) raises a claim through the scheme against the merchant's provider of card facilities. That provider will then consider whether the claim meets the relevant criteria for chargeback (if necessary, seeking evidence from the merchant) before responding to the claim. Where necessary, the scheme provides for arbitration between the financial businesses.

Chargeback is however primarily a scheme for resolving disputes about payment settlements – including, for example, where payments are not authorised or are duplicated. That was not the case here, since the card payment was made for the correct amount to the correct payee. There were no grounds for a chargeback in this case.

My final decision

For these reasons, my final decision is that I do not uphold Mr V's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 8 April 2025.

Mike Ingram
Ombudsman