

The complaint

Mr M complains about a claim he made to Nationwide Building Society ('Nationwide').

What happened

The background is well known to both parties, so I'll only summarise it here.

In early 2023, Mr M purchased a garden office (referred to as a 'cabin') for a total of £3,761.90 from a supplier I'll refer to as 'G'. On two occasions, a number of parts were replaced the last of which was in, or around, June 2023. However, when Mr M asked for compensation for the inconvenience caused, G didn't agree to pay the £500 requested. So, Mr M asked Nationwide for help.

Nationwide considered whether (or not) it should honour a connected liability claim under section 75 ('section 75') of the Consumer Credit Act 1974 for breach of contract or misrepresentation. A few months passed without Nationwide taking any substantive steps, and when it did get in touch with Mr M in January 2024, he said new faults had developed and he wanted to change the amount he was claiming as he needed to carry out repairs.

Ultimately, Nationwide concluded it would need Mr M to obtain an expert report so as to establish liability. But Nationwide upheld Mr M's complaint in part and offered (and paid) £100 in compensation for delays and other customer service issues. Our investigator didn't recommend upholding the complaint and whilst I agreed with this outcome, I issued a provisional decision with additional reasoning. Mr M disagreed with my provisional findings, so the matter has been passed to me to reconsider.

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.

Mr M made several points in response to my provisional decision. However, from what I can see, he has mostly reiterated what he'd previously told us. So, my decision remains that I don't uphold this complaint. The reasons for this are as follows:

It isn't clear if Nationwide attempted a chargeback under the Visa dispute scheme – but considering the nature of the claim (involving allegations of misrepresentation and breach of contract along with claims for consequential losses), I think section 75 wasn't an unreasonable route for it to have focused on. Further, under the Visa rule for 'defective goods' the cardholder needs to either have returned the goods, or made them available for collection, neither of which happened here. Mr M made it very clear that returning the cabin (goods), wasn't an option for a variety of reasons which I totally understand. However, I don't think the conditions for a chargeback were met. All in all, I'm satisfied Nationwide didn't act unfairly in not pursuing a chargeback, as I don't think it would've had a reasonable chance of success.

In terms of the section 75 claim, in certain circumstances, this allows Mr M to hold Nationwide liable for a 'like claim' for breach of contract, or misrepresentation, in respect of

an agreement by a supplier of goods or services, which is funded by its credit card. There are certain requirements that need to be met in order for section 75 to apply – after considering these factors, I think the requirements are met here. So, I've gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation. In coming to my findings, I've considered the specific terms of the contract with G alongside any terms implied by the Consumer Rights Act 2015 (satisfactory quality, misdescribed etc.).

My understanding is that Mr M initially asked G for £500 in compensation which he said was for delays and the effort made in organising replacement parts. So, from what I can tell, Mr M's claim, at least at first, was for consequential losses which G said it wasn't liable to pay – it agreed to replacement parts but that was as far as it was willing to go. So, when Mr M approached Nationwide he was looking to claim the £500 G refused to pay. However, courts will only award for consequential losses in very limited circumstances. And as this was a supply only contract, I'm not persuaded any such losses could be said to be in the contemplation of the contracting parties at the time of purchase. Further, a court wouldn't normally award for the time and trouble inevitably spent on dealing with the consequences of the breach.

However, I can see Mr M's claim moved on by the time Nationwide contacted him in January 2024 – at this point, he seems to have been claiming for direct losses such as repair costs for what he said were faulty parts including the parts that had been replaced. Mr M's description of the faults included that: the cabin was leaning to the right; the rear wall was bowing out; and there were gaps with light coming through the roof. Mr M also provided photos which he says shows, amongst other things, the door not being properly aligned.

I very much sympathise with the issues Mr M has faced with his cabin, but in my view, the faults he describes could all be related to the way the cabin was built rather than the materials supplied by G. It should be remembered that the contractor (landscaper) Mr M employed to build the cabin was separate and not related to the contract he had with G. Whilst I've noted what Mr M says about the landscaper's experience, who he says had built 20 other similar cabins previously, I think there are too many variables that could've impacted on the issues he says developed several months after the cabin was built.

I know Mr M has said the replacement parts were also faulty and were still so at the time of construction and despite this, his landscaper 'persevered' on. But it's unclear to me why the landscaper would've done so given the obvious risks of something going wrong at some point. Further, when Mr M contacted G asking for compensation, his correspondence didn't indicate the replaced parts were still faulty – he wasn't looking for a price reduction, for example, rather he asked for compensation for the inconvenience. I should add, I don't think that just because there were issues with some parts which were replaced prior to the cabin being fully built is, in itself, sufficient evidence of further breaches of contract by G. All in all, I don't think it was unreasonable for Nationwide to ask for an independent report, the cost of which it said it would reimburse if a breach of contract was made out.

I appreciate Mr M was having difficulties finding an 'industry expert' and thought it unreasonable of Nationwide not to help him more. Whilst financial service providers do have various regulatory duties, I don't think this extends to it keeping a register of independent experts and/or making any recommendations in this respect. As Nationwide's agent said to Mr M during a call on 30 May 2024, section 75 claims can be extremely varied, involving a wide range of product areas, it wouldn't be practical for it to do so.

In any event, during the discussion with the agent, I can hear it was agreed that Mr M could obtain a report from his landscaper. Mr M says Nationwide should've arrived at this decision earlier, but its standard practice for claims of this type to be supported by reports that are 'independent', which the landscaper could not be said to be. From what I could hear during the discussion over the phone, the agent appeared to be trying to reach a compromise in

light the difficulties Mr M said he was having obtaining an independent expert report. I think Nationwide acted reasonably here.

Of course, the findings of any report would still need to support the case for a breach of contract and from what I can see, the only information provided by the landscaper was a quote for the cost of repairs along with a brief description of what these repairs would be. So, this wasn't deemed acceptable by Nationwide, and given the lack of detail, I don't think this was an unfair decision to reach. Mr M says he recalls the conversation with the Nationwide agent differently and says he was only asked for a quote and that this would be enough to settle matters, but this isn't what was said. I've arranged to send a copy of the call to Mr M and it's clear the agent said he would need to obtain a report and a quote, not simply a quote. So, I don't think Nationwide acted unfairly here.

I also don't think there's evidence of Nationwide trying to 'frustrate' Mr M's claim which he considers was because there was a 'conflict of interest' between it acting as his credit card provider and acting for G as the supplier. And he thinks it should've done more to help him make out his claim. However, it should be remembered that Mr M is seeking to bring a 'like claim' against Nationwide under the connected liability provisions in section 75 so, by necessity, it will be stepping into the shoes of the supplier in its own right. I don't think that means it hasn't acted in line with its regulatory duties towards Mr M as its customer. Further, Mr M thinks Nationwide's process should've included contacting G. But I don't think there was any requirement for it to do so, particularly as it didn't think there was sufficient evidence of a breach of contract.

Finally, in terms of his section 75 claim, I note Mr M says Nationwide should also be liable for what he says was a misdescription on G's website where it said the cabin would be easy to build. In his view this wasn't the case. But whether something is 'easy' to build (or not) is very subjective and, as with other parts of his claim, can very much depend on a number of factors. I don't think I can fairly or reasonably say the statement on G's website about how 'easy' (or not) the cabin was to build amounts to a misdescription, or misrepresentation (i.e. a false statement of fact) for which Nationwide can be held liable.

In light of the above, I don't think Nationwide has acted unfairly or unreasonably in declining to honour Mr M's connected liability claim.

In terms of the customer service provided by Nationwide, I agree there were shortcomings here. For example, there were delays with Nationwide starting to review Mr M's claim and with some of its responses. Mr M was also asked to provide information he'd already submitted. And whilst I can see that Nationwide did explain why it couldn't provide a list of experts, arguably it should've explained this sooner. I can understand this added to Mr M's frustration around the whole process. From listening to a call on 31 May 2024 where the agent offered £100 for these customer service issues, Mr M seems to have accepted this was fair compensation. In the round, I'm satisfied this was the case. I appreciate Mr M thinks Nationwide should pay a further £100 for trouble and upset caused following the call with the agent, but this seems to be on the basis of it, in his view wrongly, not upholding his section 75 claim. As I've explained, I don't think it acted unfairly in this regard.

In terms of what Mr M said in response to my provisional findings, I note the following:

- *Mr M reiterated what he said about what he describes as Nationwide's conflict of interest but I've nothing further to add than what I've said above.*
- *I appreciate the £500 Mr M requested G to pay in compensation, wasn't his 'go to position'. And I accept it must have been frustrating having to arrange for replacement parts from G following the initial supply. But from everything I can see the faulty items were correctly replaced which allowed the installation of the cabin to go ahead.*

- I've reviewed the attached photo's Mr M has sent me, but these appear to have been before the cabin was built. I don't think these are enough to show that the replacement items he received from G were still faulty prior to the fitting. I appreciate Mr M says that he had no choice but to fit them as they were. But as I've said, I can't reasonably or fairly conclude that once fitted the cabin was showing faults as a result of the goods supplied by G rather than (for example) due to the way it was fitted – this is why Nationwide asked for an independent report which I don't think was unfair.
- I think Nationwide made it clear why a report was needed, including during the call with Mr M (which I know he still disputes). Whilst I can see his landscaper did provide a quote showing there was a need for repair, I can't see there was sufficient evidence of the *cause* of the fault.
- Mr M says that if Nationwide had initiated a chargeback this may have prompted G to a make an offer of some kind. But I don't think his claim met the requirements for a chargeback, so I don't think Nationwide acted unfairly or unreasonably here.
- Mr M acknowledged the impracticality of Nationwide keeping a register of independent experts and I take on board what he thinks the bank can do to improve things. But in this particular case, I don't think it's acted unreasonably in this regard.
- I acknowledge what Mr M says about the 'subjective' point I made above in relation to G's claim about how 'easy' the cabin was to build. To be clear, my main point here is that I don't think this claim was a statement of fact – rather it was an opinion and so, wouldn't be a misrepresentation.
- I understand what Mr M is saying about the different dates for the claim and complaint. And I appreciate Mr M is dissatisfied with the overall service provided to him by Nationwide including the delays with reviewing his claim. But, as I've said above, I'm satisfied the £100 Nationwide agreed to pay him including for the delays it caused during the course of his claim, fairly and reasonably compensates him.

My final decision

My final decision is that the £100 already offered to Mr M fairly and reasonably compensates him for the errors made by Nationwide Building Society. I understand this sum has already been credited to Mr M but if it hasn't, Nationwide Building Society should pay him anything that remains outstanding.

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

Yolande Mcleod
Ombudsman