

complaint

Mr D complains about a claims management firm ('Firm A') which he paid £750 to assist him with an employment dispute. He brings his complaint against Nationwide Building Society under section 75 of the Consumer Credit Act 1974.

background

In summary Mr D says that Firm A did not do what it promised, and acted without due care. He says that as a result of its poor representation and advice he has had to pay the defendant £13,000 in costs.

After our first adjudicator's involvement in the complaint Nationwide agreed to refund Mr D the £750 fee he had paid Firm A, but not the additional costs he is claiming.

The second adjudicator to look at this matter was not persuaded there was clear evidence that Firm A had breached its contract with Mr D. However, she noted that Nationwide's offer to refund the cost of the service was available to him. In summary, she was not persuaded that the actions of Firm A had led to the tribunal ordering costs against Mr D, so did not recommend that Nationwide pay these.

Mr D disagrees. In summary, he says that after preparing a letter before action and claim form, Firm A did nothing. He says that it sabotaged his claim and prevented him having his day in court. And adds that Firm A was not the employment law expert it claimed to be, and has acted fraudulently as a result.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where matters are in dispute or unclear I make my findings on the balance of probabilities – which is to say, what I consider most likely to be the case based on the evidence that is available and the wider surrounding circumstances.

I note that Mr D has made substantial submissions which I have read and considered. However, I will be focusing on the matters which I consider to be central to his section 75 complaint. It is also worth noting that despite Mr D's references to scams and fraud, this service provides informal civil dispute resolution, and is not a criminal regulator or investigator. Here I will be considering whether it is fair and reasonable for his section 75 claim against Nationwide to succeed on the basis of misrepresentation and/or breach of contract.

No contract has been provided to explain exactly what service Firm A had agreed to provide Mr D, or what terms and conditions apply to this service. However, from the evidence that is available I am satisfied that that Firm A had broadly agreed to assist him with preparing for an employment dispute at tribunal, and represent him at the hearing.

From the information available to me it appears that Firm A provided Mr D with some services. Mr D does not dispute that it assisted him with a letter before action and the tribunal claim form. I note that Firm A does not appear to be providing its services any longer (the Ministry of Justice does not explain the reason for this). However, there is no compelling evidence of a breach of contract in these particular circumstances. I accept that it is possible that Firm A did not provide all the services that it originally intended to (I note that in the end there was no hearing on Mr D's case, and representation possibly formed part of the overall fee). However, I note that Nationwide has offered Mr D a refund of the £750 fee he paid to Firm A, which would fairly compensate him for this in any event.

Mr D is correct in stating that Firm A was under a duty to perform its services with reasonable skill and care. This is a term implied into a contract, regardless of whether we have a copy to hand. Mr D strongly believes that Firm A did not act in his best interests. In my mind, the primary issue in dispute here, is whether or not a lack of skill and care by Firm A led to the tribunal deciding to make a costs order against Mr D.

When considering this matter I find the employment tribunal judge's costs ruling to be crucial evidence. After carefully considering the ruling it appears that one of the main reasons costs were awarded against Mr D is because of his behaviour towards the defendant. The judge says he was 'abusive' and 'highly abusive' in his correspondence. I also consider that part of the judge's reasoning for awarding costs is that the claim was brought prematurely and that Mr D unreasonably persisted with matters until a late stage before withdrawing.

Mr D blames Firm A for the claim being 'misconceived'. However, although Firm A assisted Mr D with preparing the claim form, I am satisfied from the evidence on file that it was ultimately Mr D's decision (after he had reviewed the form) to submit his claim for unfair dismissal before he had been dismissed. From the comments of the judge it would appear that Firm A was potentially unaware that Mr D had decided to submit the claim form when he did. Furthermore, although Mr D has recently said that Firm A made the decision to withdraw the claim at a late stage, from Mr D's earlier submissions, the judgement and the wider evidence, on balance, I am satisfied that it was his decision as to when the case was withdrawn.

It is not clear if Firm A misrepresented its expertise or acted without due care. However, even if I were able to conclude that this was the case, overall, there is a lack of persuasive evidence to show that the judge decided to award costs because of negligent behaviour or advice from Firm A. The primary reasoning behind the costs order appears to relate to decisions which were made by Mr D. Therefore, it follows that I am unable to fairly conclude that these costs are consequential losses that Nationwide should pay for under section 75.

I know that this is not the outcome which Mr D wants. However, he does not have to accept it and is free to pursue his complaint by alternative means, such as court, should he wish to.

my final decision

I simply leave it to Mr D to decide if he wishes to accept Nationwide's offer of £750 compensation,

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 13 March 2015.

Mark Lancod
ombudsman