

complaint

Ms P says National Westminster Bank Plc ('NatWest') has unfairly declined her claim under section 75 of the Consumer Credit Act 1974 ('CCA').

background

In 2004, Ms P had an elective surgical procedure for which she paid £3,700 using her NatWest credit card.

In 2013, Ms P had surgery to reverse the procedure.

In 2018, Ms P contacted NatWest to make a claim under section 75 of the CCA.

At first, NatWest was unable to find Ms P's credit card account, so Ms P referred her complaint to our service. NatWest sent us evidence to show it had searched its records and couldn't find Ms P's account. However, Ms P was able to provide us with some additional information which allowed NatWest to find her credit card account.

NatWest declined Ms P's claim under section 75 of the CCA because it was made more than six years after her initial surgery. It said her claim was therefore time barred under the Limitation Act 1980.

Our investigator didn't think it was unfair for NatWest to rely on the Limitation Act when it declined Ms P's claim.

Ms P doesn't think it's fair – so her complaint has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. When considering what is, in my opinion, fair and reasonable in all the circumstances of the case, I'm required by DISP 3.6.3R of the Financial Conduct Authority (FCA) Handbook to take into account:

'(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.'

When the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

First, Ms P says it's been 'a battle' to get NatWest to admit she even had a credit card. I can appreciate her frustration. However, as our investigator explained, NatWest sent us evidence to show it had searched its records using the information she'd provided and couldn't find an account. Fortunately, Ms P was able to provide us with some additional

information which allowed NatWest to find her credit card account and assess her claim. I haven't seen any evidence that NatWest treated Ms P unfairly before she referred her complaint to our service – or that it caused any avoidable delays.

Section 75 of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. In other words, if the consumer has a claim against the supplier for misrepresentation or breach of contract, she has a 'like claim' against the finance provider.

NatWest says Ms P has waited too long to make her claim. It's referred to the Limitation Act, which says a claim must be made within six years of the breach of contract.

Ms P says her implants were faulty, which means the date of the alleged breach was the date of her initial surgery in 2004.

It's for a court to decide whether a claim is time-barred. But I can only decide whether it's fair for NatWest to rely on the Limitation Act to decline Ms P's claim if I consider the likelihood of a court dismissing her claim on this basis.

Ms P had six years from the date of her initial surgery in 2004 to issue proceedings against the supplier for breach of contract or against NatWest under section 75 – which means she had until 2010.

I'm sure Ms P will think this is very unfair as it seems she only learned that her implants were faulty in 2012 – although it's not clear why she then waited almost six years to make her claim.

However, the six-year time limit for a breach of contract claim or a section 75 claim runs from the date of the alleged breach – even if the claimant didn't know about it until much later.

So if Ms P had issued proceedings against the supplier for breach of contract in 2018 – almost 8 years after the limitation period expired – I think it's more likely than not that the court would've dismissed her claim on the basis that it was time-barred. And if a consumer's claim against the supplier is time-barred, she no longer has a 'like claim' against the finance provider or it is likewise time-barred.

As a result, I don't think it was unfair for NatWest to rely on the Limitation Act to decline Ms P's claim.

I know Ms P thinks this is very unfair – she says she doesn't understand why she's lost out when she's the victim. I have a great deal of sympathy for Ms P and I don't mean to dismiss or diminish what she's been through. But NatWest didn't do anything wrong. It's only answerable for the supplier's alleged wrongdoing because of section 75 – so I think it's only fair to let it take into account what the law says about when it does and doesn't apply.

my final decision

For the reasons I've given, I've decided not to uphold Ms P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 2 August 2021.

Christopher Reeves
ombudsman