

complaint

Mr G complains that National Westminster Bank plc didn't explain to him that he wouldn't have the same protection with a charge card that he had with a credit card.

background

Mr G has been a customer of NatWest for many years. In 2003, he upgraded his bank account and was given a charge card. He'd had a NatWest credit card up to that point, but when he was given the new card he started using that instead. The terms of the charge card required Mr G to clear the balance each month – unlike the credit card, which required a much lower minimum payment. That however made no practical difference to Mr G, since he'd always paid the balance of the credit card in full each month.

In 2016 Mr G engaged a business to sell a timeshare. He used his charge card to pay £2,800 of the fee of around £11,000 the business demanded for its services. Mr G was unhappy with the service he received from the timeshare business and sought the bank's help – since he'd paid for those services in part using its card.

NatWest said however that Mr G didn't have the statutory protection of section 75(1) of the Consumer Credit Act 1974 ("the Act"). That was, it said, because the card he'd used to pay was a charge card, the balance of which had to be paid each month.

Mr G complained to NatWest. He said he didn't realise the card wasn't a credit card and pointed out that the bank had on many occasions over the years referred to it as such. Had he realised it didn't carry the same protections as a credit card, he would have changed it for a credit card and used that card to make the payment in 2016. NatWest still didn't agree to meet his claim and pointed out that it had used the expression "charge card" as well.

Mr G wasn't happy with NatWest's response so he came to this service. Following discussion with our adjudicator, NatWest agreed to refund the £2,800 deposit. The bank agreed too that its literature could have been clearer about the nature of the card. But it also said that, because Mr G clears the balance on the card every month, he must have known it was a charge card. Our adjudicator thought that the offer was fair.

Mr G didn't think that went far enough. He said his claim against the timeshare business was for more than the return of the deposit, and that NatWest should meet the full claim, not just the sum he paid using the card. He asked that an ombudsman review the matter.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr G says that, when he was given the card in 2003, he wasn't made aware that it was different from the credit card he'd had before. We asked NatWest for copies of any literature which was given to Mr G about the card at the time. The bank provided some of his charge card statements from 2004 and 2005, but can't confirm what information he was given about the card, given the amount of time which has passed. I think it unlikely though that he was told anything specifically about section 75(1).

As I've indicated, Mr G's day-to-day use and management of the charge card changed very little. He cleared the balance in full by monthly direct debit, as he had his credit card account.

He accepts that he had no appreciation of the distinction between the two, and I think there's no reason why he should have done. He says that NatWest didn't advise him it was different from a credit card.

Mr G says, correctly, that NatWest uses the terms "charge card" and "credit card" interchangeably in relation to the card. For example, sometimes the card is referred to as a charge card and then a credit card within the same letter. There are similarities, of course, and to some extent a charge card is a type of credit card; both are used to obtain credit – which, by section 9 of the Act includes "... any ... form of financial accommodation".

The terms "credit card" and "charge card" are not used in the Act. Rather, it speaks of "*running-account credit*", defined in section 10(1)(a) as "...a facility under a consumer credit agreement whereby the debtor is enabled to receive from time to time (whether in his own person, or by another person) from the creditor or a third party cash, goods and services (or any of them) to an amount or value such that, taking into account payments made by or to the credit of the debtor, the credit limit (if any) is not at any time exceeded." That definition is wide enough to cover a card account which must be paid in full each month and one which requires only a minimum payment.

The Act also uses the term "*credit-token*", defined in section 14 as "... a card... given to an individual by a person ... who undertakes that where, on the production of it to third party..., the third party supplies cash, goods and services..., he will pay the third party for them ..., in return for payment by the individual." That describes how both Mr G's NatWest charge card and his credit card operated when used for face-to-face transactions. He would hand the card to a retailer; the retailer would provide goods or services; NatWest would pay the retailer; and NatWest would send a bill to Mr G.

In the circumstances, I don't believe it would be fair to say that NatWest should not have used the term "credit card" in the way it did. But, whilst Mr G's charge card shared many features with his credit card, it didn't carry section 75(1) protection. I'll explain why.

The effect of section 75(1) of the Act is that, in many cases, a person who buys goods or services using a credit card and who has a claim against the supplier of those goods or services can bring the same claim against the card provider. But subsection (3)(c) says that subsection (1) does not apply under an agreement:

"(i) which provides for the making of payments by the debtor in relation to specified periods which, in the case of an agreement which is not secured on land, do not exceed three months, and

(ii) which requires that the number of payments to be made by the debtor in repayments of the whole amount of the credit provided in each such period shall not exceed one."

Both of these applied to Mr G's account, and so he didn't have the protection he thought he did when he first referred the matter to NatWest. The way the card account was intended to operate meant it fell within the section 75(3)(c) exception. That exception applied from February 2011; but before that, other provisions of the Act (not now in force) meant that Mr G would still not have had the protection of section 75(1).

I accept that, until he made a claim, NatWest didn't tell Mr G that his charge card wouldn't carry section 75(1) protection. Mr G hasn't suggested that he was ever told that it would, or indeed that he was told anything specific about section 75. I find it most unlikely that the bank said anything about it, either when Mr G was using his credit card or when he took out the charge card. But I don't believe NatWest was under any duty to say anything about

section 75, any more than I would expect it to alert Mr G to other statutory provisions that might or might not apply – beyond of course what it was required to do by law or relevant regulations.

That said, if the bank did provide information about Mr G's charge card and its operation, it had to do so with reasonable care and skill. But the only information giving any suggestion at all that section 75(1) could apply is that the bank's regular and frequent description of the card as a "credit card". Mr G says that misled him into believing the charge card was essentially the same as a credit card, with similar protections. In my view, that's something of a stretch, particularly since the bank also used the term "charge card". Even if I took a different view on that point, I don't think using the term "credit card" can, of itself, be taken as an indication that section 75(1) applies to it. For example, a company credit card wouldn't have that protection, and in most cases neither would a credit card used by an additional cardholder. But both would generally (and accurately) be described as a credit card. I note too that the credit agreement was described only as "partly regulated" by the Act.

For these reasons, I don't believe that NatWest misled Mr G into thinking he had the protection of section 75(1). Nor do I believe the bank was under any obligation to advise whether or not he did have that protection. I would comment though that I don't accept the bank's argument that Mr G must have known he had a charge card because he repaid the balance in full each month; that was, after all, how he'd operated his credit card account.

I note that NatWest has nevertheless offered to refund the £2,800 paid for using the card. I'm satisfied that offer was made in an attempt to settle the complaint, not because the bank believes it has done anything wrong. I shall however make a formal award for that amount, so that it's binding on NatWest, should Mr G choose to accept my decision. But I don't believe it would be fair to require NatWest to go any further.

my final decision

For the reasons I've explained, my final decision is that, in full and final settlement of Mr G's complaint, National Westminster Bank plc should refund the sum of £2,800 to Mr G if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 August 2019.

Michael Ingram
ombudsman