

The complaint

Mr C complains that Nationwide Building Society (“Nationwide”) treated him unfairly in relation to a claim he made under Section 75 of the Consumer Credit Act 1974 (“Section 75”).

What happened

I’ve set out below Mr C’s version of events in summary and also Nationwide’s version of the same events, also in summary.

A summary of Mr C’s version of events

Mr C wanted to protect and maintain a house which he refers to as “*my asset*”. Therefore he agreed to buy a wall coating treatment from a third party supplier I’ll call “G”. (Although Mr C saw the property as his asset, legally the home belonged to Mr C’s father at this point.)

Mr C tells us G convinced him:

“that my walls required urgent remedial treatment to prevent rapid and costly deterioration, and that their wall coatings were the permanent answer with anti-crack and colour fade technology”.

Therefore in May 2012, Mr C agreed to enter into a contract with G for it to provide and install the wall coating. Mr C paid for the work using his Nationwide credit card. G provided a contract for the works and also a 25 year guarantee.

However, an employee of G who I’ll call “Mr T” made several mistakes when putting the contract into writing. The details of the mistakes made by Mr T were as follows:

Mistake 1:

Mr T, *“completed the [customer] details on the agreement, but erroneously entered my father’s name and requested his credit card details. I told him that I was placing the order and would pay for the works.*

However, Mr T didn’t alter the paperwork – to the extent that he did not record my Nationwide Credit details or my name correctly on the “sales agreement”. I was verbally assured by Mr T that none of this mattered as the agreement and guarantee was with me.”

Mistake 2:

Mr T noted in the contract that Mr C’s father had paid the deposit using his credit card. However, Mr C’s father paid no deposit, and neither could he have done. The amount of the deposit was more than the total credit limit on Mr C’s father’s credit card account. Mr C pointed out this mistake to Mr T, but Mr T did not think it was necessary to amend the agreement to remove these details.

Mistake 3:

“My father signed the agreement at the behest of Mr T, because he said my father (sic) name was on the deeds and matching the guarantee to the deeds would make things easier if/when the property was sold”.

G provided a contract, a guarantee and a quote. The guarantee and the quote are addressed to two people (with the same surname as Mr C), at Mr C’s father’s address. Mr C

is married, and he and his wife did not live at his father's address when the contract was made. Mr C's father and mother lived together at the property when the contract was made. Mr C and his wife and Mr C's father and mother all have the same surname. Mr C says the guarantee and quote are "*most likely addressing me and my wife*".

A number of years passed, and Mr C experienced some very sad life events, including the death of his parents. Mr C was his father's executor, and he also inherited the house under his father's will.

While Mr C was acting as his father's executor he was contacted by a Claims Management Company which I will call "H". This contact happened seemingly at some point in 2021. H told Mr C that G had ceased trading. Moreover, H told Mr C that it was in the process of bringing claims for misrepresentation under Section 75 for a number of G's former customers. H offered to represent Mr C. Mr C agreed to instruct H.

H sent Mr C's claim to Nationwide. Subsequently H told Mr C, Nationwide had accepted all claims against G "*on grounds of misrepresentation*".

However it then turned out that Nationwide had declined Mr C's claim on two grounds a) Mr C's claim did not meet the conditions for a valid claim under Section 75 b) Mr C's claim had been brought too late and had timed out, under the rules that apply to bringing a case to court. So he no longer had the legal right to bring his claim.

H decided it would no longer represent Mr C.

Mr C complained directly to Nationwide about its response to his claim. Mr C considers that Nationwide is mistaken on both grounds and wants it to uphold his complaint.

Mr C tells us he paid £7,500 for the wall coating works and he wishes to recover all of that money. Further, he also tells us he sold the house for less than it was worth due to the presence of the wall coating which led to the walls being in a poor condition and he wants to be compensated for this too.

A summary of Nationwide's version of events

H contacted it in around March 2022 on behalf of its then client Mr C. H indicated Mr C had a claim against it under Section 75.

Nationwide asked H more questions about Mr C's standing to bring the claim, given the contractual information H had provided (which was incomplete) did not show that Mr C had contracted with G. Neither did it show that the property belonged to Mr C. Rather it appeared to it that the contracting party was Mr C's father and that when the contract was made the house belonged to him. H responded that Mr C's right to make the claim under Section 75 arose because he was his father's executor.

Nationwide looked at Mr C's claim both when H sent it to it and when Mr C put in a claim directly. At first it declined to meet the claim on the grounds that Mr C told us about above. But Nationwide also sent responses that were unclear about whether Mr C was in time to bring his claim to court. Later Nationwide wrote to say it was declining Mr C's claim as he had no standing to bring the claim under Section 75 due to not being a contracting party and not benefitting from the contract.

Nationwide said this about H's assertion that it has accepted blanket liability for claims against G:

"We're (sic) never informed [H] that we'd be liable and it's unclear where this statement has derived from."

Nationwide's stance is that it has done nothing wrong and need take no further action.

What happened once the complaint came to us

Dissatisfied, Mr C complained to our service.

Once the complaint was with us one of our investigators looked into Mr C's complaint.

Our investigator pointed out that Mr C's payments to G were actually made to a company that appeared to be, on the face of it, unconnected to G. I'll call this company "A". Mr C suggested we ought to ask for any relevant internal records from G, and A and another company that I will call "R" which seemed to be an alternative name for G. But in fact G and R were two separate companies.

Mr C also added further details about the nature of the contract that he says he had with G. According to Mr C this contract was a verbal contract in part, insofar as all the mistakes 1-3 (mentioned above) were corrected verbally at the time. Therefore the written contract was verbally amended.

Moreover, Mr C told us that he'd been incorrect when he said his father had signed the contract with G, because he had not. Mr C said in fact he'd signed the contract with G. Further, Mr C invited us to analyse the signature on the contract and compare it with his father's signature on another document.

Mr C pointed out he was a beneficiary of the contract with G for several reasons. These reasons included because under his father's will he'd been left the house and he knew this at the time the contract was made. Moreover Mr C benefitted from the contract because it was intended to protect the walls of what he saw as his asset.

Mr C also raised new points about the enforceability of the contract with G. Mr C also told us that A was dormant at the time it took payment from him. Therefore he considers the fact that a dormant company took the payment might be fraud. With regard to the new points Mr C added:

"I would like the Ombudsman in addition to my specific s75 CCA 1974 claim to also consider whether I have additional or further claims in respect of misrepresentation and or fraud and or tort (fraud / economic tort)" that could be held against Nationwide.

Our investigator indicated that these were new matters and that we were not going to investigate them. Mr C disagreed rather he thought he had already asked Nationwide to look at these points when he asked Nationwide in the course of his correspondence with it to look into *"my broader concerns about fairness to which I have alluded"*.

Our investigator did not recommend that Mr C's complaint be upheld.

Nationwide accepted our investigator's recommendation, Mr C did not. In brief, in rejecting our investigator's recommendation Mr C reiterated his previous points.

Mr C asked that an ombudsman review his complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mr C has now also raised a question about the enforceability of the contract. He has also asked me to consider in addition to his complaint about his claim under Section 75 his claims about misrepresentation and/or fraud and/or tort. These appear to be a new matters which

have not been considered by Nationwide in its final response to Mr C or investigated within this complaint. I don't agree that Mr C raised these issues previously in his correspondence with Nationwide. It follows that I am unable to look at these matters in this decision as I have no power to do so.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time. I think here relevant law includes the Consumer Credit Act 1974 and in particular Section 75.

Mr C and Nationwide disagree about nearly all of the key issues in this complaint. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances

That said, it is common ground between Mr C and Nationwide that the general effect of Section 75 is that if Mr C has a claim for misrepresentation or breach of contract against the supplier he can also bring a like claim against Nationwide provided certain conditions are met.

One of the conditions that needs to be met is that there would need to be a very specific type of agreement in place known as a debtor-creditor-supplier agreement. In this instance Mr C would need to be the debtor, Nationwide the creditor and G the supplier but I don't think there is any such agreement here, that would give Mr C the right to raise a claim under Section 75. I say this for a number of reasons which I'll go through below:

For Mr C to be a debtor for the purposes of the debtor-creditor-supplier agreement he'd need to be a contracting party in relation to the contract that was financed by the credit. It follows then that one of the key issues is: who is the contracting party in relation to the contract with G? However, Mr C has given several different explanations about this, some of which are mutually exclusive.

First he told Nationwide via H that his right to claim was due to representing the estate of his father as the executor. That would mean he was saying the estate, that is his father was the contracting party. Later Mr C indicated that the contract was made by his father and G and therefore his father signed the contract. This fits with what Mr C said about being entitled to bring a claim on behalf of the estate of his father. However, in the alternative, Mr C has also told us he signed the contract with G and the contract was varied after it was written. With these inconsistencies in mind I have difficulty relying on the accuracy of Mr C's recollections about this aspect of his complaint.

I think it is reasonable when trying to establish who are the contracting parties to a contract, to look at the contract. The written contract for the works that I have seen says the contract was between Mr C's father and G. On the face of it therefore I need look no further. Moreover, Mr C gave strength to the premise that his father was the contracting party by telling Nationwide he was able to make a claim against it as the executor for his father's estate, as I've already mentioned. I've seen no persuasive explanation as to why Mr C said this at first instead of saying he contracted directly with G.

Mr C indicates that the written contract is flawed for a number of reasons, for example because it does not include all of his father's initials. But flawed or not (and I make no finding about this) the written contract indicates that the two contracting parties were Mr C's father and G. Not Mr C and G.

I note that Mr C tells us the written contract does not reflect the complete contract. Specifically, Mr C tells us G made mistakes in the written contract in naming his father as the contracting party, and to correct this G and Mr C varied the terms of the contract verbally. In other words, the parties to the contract – who he says are himself and G – did not intend to record all of the terms of their agreement in the written document. Further, Mr C's stance is

that to establish what those verbal variations of contract were I should look at the wider circumstances.

I certainly accept that in principle a contract can be made verbally. By their very nature such alleged verbal conditions are hard to substantiate, and I therefore would have to assess this aspect on the basis of the balance of probabilities. And I also agree when seeking to establish what those verbal conditions might have been it's appropriate to look at the wider circumstances of the complaint. I'm not sure whether a verbal variation after the written contract was made would lead to a variation of that contract or to a new separate ancillary contract. Neither do I see how, if Mr C on paper was not a party to the written contract in the first instance, he could have nonetheless agreed to vary it verbally or otherwise with G. But I don't need to go into these points any further because of what I say below about the relevance of verbal contracts to this complaint.

I think it is something of a red herring to look at verbal contracts here. Because when I look closely at what Mr C tells us happened, he is not really saying the contract was a verbal one or a part verbal contract. Rather he is saying the written contract should have been in his name from the beginning but G by mistake substituted his father's name and credit card details for his. So, Mr C indicates, I should consider the impact of a mistake in the formation of contract. But before I do that I have to think about whether it is likely any such mistake was made.

The parties to a contract are fundamental terms of any contract. I find it unlikely therefore that G would have made a mistake about this. Moreover, I find it likely, given the nature of the contract, that G would have contracted with the owner of the property, who was Mr C's father not Mr C. I recognise Mr C tells us he had subjective reasons for considering the property his asset at the time. But none of those reasons made him the owner of the property, and neither did those reasons give him the legal right that an owner would have to make a contract in relation to the property.

I also note that mistake 1 and mistake 3 contradict each other. In the scenario under mistake 1 there was never any intention for Mr C's father to contract. But according to the scenario under mistake 3, Mr C's father signed the contract to avoid future complications. So it was the intention that Mr C's father should contract and therefore sign the contract. These contradictions undermine the weight I feel able to place on either scenario.

Further, the question of who actually signed the contract further undermines Mr C's suggestion he was meant to be the contracting party. At first he said his father signed, then he said he signed. I should think Mr C might have remembered in the first instance who signed the contract. But instead he has given two different contradictory versions of this simple point.

I also find it likely that if G had made a mistake about who it was meant to contract with, and this was pointed out immediately, it would have amended the contract in writing there and then. The fact that it did not, leads me to think that there was no mistake.

Moreover, Mr C's father seemingly made a payment towards the contract. Mr C says actually no payment was made by his father despite what the contract says. But even if this were the case, I can't see why Mr C's father would have provided his credit card details to G if he did not intend to contract with it. This too militates against what Mr C has told us about him being meant to be the contracting party.

The question of mistakes in the formation of the contract aside, Mr C invites me to look further than just the contract to take account of pre- and post-contractual documents. Mr C points to the quote and the guarantee from G, which are addressed to Mr and Mrs C, at Mr C's father's address at the time. Mr C says these documents were addressed to him and his wife. I can't see why G would have written to Mr C and his wife at his parent's address, or why G would have written to Mr C's wife at all. But I can see why G would have written to Mr C's father and his mother, at their own address. I find it more likely than not that these

documents were addressed to Mr C's father and his wife, this again supports the notion that Mr C's father was the contracting party.

I don't find that being a beneficiary of a contract would make Mr C a debtor for the purposes of the debtor-creditor-supplier relationship. But in any event, I'm not satisfied Mr C was a beneficiary of that contract with G simply because he tells us he was named in his father's will (that could have been revoked at any time) as the person who should inherit the property. Or because one of the reasons Mr C wanted to maintain that property was because he saw it as his asset. In any event, Mr C says he contracted directly with G. He does not appear to be relying on saying he is beneficiary of that contract. And even if he is saying this then, that would contradict what he tells us about being a contracting party in his own right.

For all of these reasons I find that on balance Mr C does not meet the conditions to bring a valid claim under Section 75 against Nationwide.

It follows that Mr C's claim for losses including the loss he says he made when he sold the house falls away, given my findings above.

For completeness I'll add the following points, but I'll make no findings about them as I do not need to do so.

Mr C's payment went to A not G. Therefore for this reason too I might have found that there was no debtor-creditor-supplier agreement that would have enabled Mr C to bring a valid claim under Section 75.

Further, I've not seen any uncontested evidence that demonstrates that a misrepresentation was made. And I'd need that information to uphold this complaint. All I have seen is that H told Mr C that Nationwide had agreed to uphold claims about G on the basis of misrepresentation. Nationwide certainly has not said any such thing in relation to this complaint quite the opposite. And the onus would be on Mr C to demonstrate misrepresentation had occurred such as would give rise to a claim by him against G and a like claim against Nationwide.

The question of whether Mr C has lost the right to go to court is not something I need to look at and appears irrelevant to this complaint and is not something I could decide on. Moreover it is not even clear if Nationwide is still raising this objection.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 September 2023.

Joyce Gordon
Ombudsman