DRN-4476588

The complaint

Mr C has complained that Lloyds Bank PLC ('Lloyds'), unfairly turned down his claims made under provisions of the Consumer Credit Act 1974 ('the CCA').

What happened

In November 2015, Mr C purchased a holiday club membership from a business I will call 'Business D'. This cost £10,100 and was funded by Mr C trading in a trial membership he held with Business D and making two payments with his credit card provided by Lloyds.

Mr C, using a professional representative (the 'PR'), raised a claim under s.75 of the CCA on 14 July 2020. Lloyds rejected this claim sometime later. The PR then raised another claim under both s.75 and s.140A CCA on 3 November 2021. Lloyds did not change its position, so the PR brought a complaint to our service.

One of our investigators considered Mr C's complaint and did not think that Lloyds needed to do anything further. He thought this because Mr C's card payments were both made in favour of an entity I'll call 'Trustee F' and not to Business D. So, he concluded that the provisions of the CCA to which the PR referred did not operate in the way the PR argued.

The PR responded to the investigator to say that the outcome reached was "manifestly correct" but that our service ought to reach a different outcome as this was unfair. A while after the investigator shared his findings, it provided a witness statement from Mr C, which set out his recollections of the sale.

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.

When deciding complaints, I am required by DISP 3.6.4 R of the FCA Handbook to take into account:

> *"(1) relevant:*
>
> *(a) Laws and regulations;*
> *(b) Regulators' rules, guidance and standards;*
> *(c) Codes of practice; and*
>
> *(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time."*

The PR brought a claim on Mr C's behalf under both sections 75 and 140A CCA. I think it is helpful to set out the relevant legal provisions.

s.75(1) CCA states:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor".

s.12(b) CCA states that a debtor-creditor-supplier ('D-C-S') agreement is a regulated consumer credit agreement being:

"a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier".

s.140A CCA states:

"(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following –

(a) Any of the terms of the agreement or of any related agreement;
(b) The way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;
(c) Any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor."

Section 140C CCA says that the reference in s.140A CCA to a 'related agreement' include a linked transaction in relation to the main agreement, which is defined in s.19 CCA as:

"(1) A transaction entered into by the debtor or hirer, or a relative of his, with any other person ("the other party"), except one for the provision of security, is a linked transaction in relation to an actual or prospective regulated agreement (the "principal agreement") of which it does not form part if –
…
(b) the principal agreement is a debtor-creditor-supplier agreement and the transaction is financed, or to be financed, by the principal agreement…"

The upshot of this is that for a claim under s.75 CCA, there needs to be a D-C-S agreement in place for the creditor (here Lloyds) to be liable to the debtor (Mr C) for the misrepresentations of the supplier (here, Business D). But, on the face of it, there was no such arrangement in place at the relevant time, which was the date Mr C entered into the Credit Agreement with Lloyds. This is because Business D was not paid directly using the credit card; rather, the payments were taken by Trustee F.

There are ways in which there can be a D-C-S agreement in place, even if the supplier is not paid directly using a credit card. The law in this area has been clarified by the judgment in

Steiner v. National Westminster Bank plc [2022] EWHC 2519 (KB) ('*Steiner*'). *Steiner* considered whether there was a D-C-S arrangement in circumstances where Trustee F took payment on a credit card in relation to the purchase of a timeshare membership from a timeshare provider. The court considered the arrangements between the parties and concluded that, as the payment to the supplier was made outside of the credit card network, in that instance there was no D-C-S agreement in place.

The circumstances of Mr C's complaint are very similar. Here, Trustee F took the payment from Mr C in the same way as in *Steiner*. So, I think a court would come to a similar conclusion and say that there was no D-C-S agreement in place and, in turn, no valid s.75 CCA claim as Business D was not paid under an agreement involving Lloyds.

I have also thought about the complaint that there was an unfair debtor-creditor relationship, as defined by s.140A CCA. However, under that provision, one can only consider how the agreements between Mr C and Business D affected the fairness of the debtor-creditor relationship if there was a valid D-C-S agreement in place. And, as I have already explained, I don't think such an arrangement was in place, nor has Mr C or the PR suggested there was an unfair relationship between Mr C and Lloyds for any other reason.

It follows that I don't think the CCA applied to the claim and complaint the PR brought on Mr C's behalf in the way the PR suggested it does.

The PR has asked that I depart from the conclusions in *Steiner* for the purposes of dealing with Mr C's complaint as the complaint was raised prior to the judgment being handed down, and it says that, had the complaint been dealt with sooner, it would have been successful.

I'm not persuaded that the PR has put forward a compelling case for departing from the acknowledged legal position. Under the rules set out above, I must take into account the law, but come to my own determination of what is fair and reasonable in any given complaint. Here, I have considered what Mr C says in his statement about the way the timeshare was sold by Business D to him but am not persuaded to depart from the judgment handed down in *Steiner* as the circumstances of Mr C's complaint are more or less identical to those in *Steiner*. So, I don't think it would be fair to make Lloyds responsible for Business D's alleged failures when the law does not impose such a liability on it in the absence of a relevant connection between it and Business D.

My final decision

My final decision is that I don't uphold Mr C's complaint.

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

Andrew Anderson
Ombudsman