DRN-4502739

## The complaint

Mrs D has complained that Barclays Bank UK PLC, trading as Barclaycard, unfairly turned down her claim made about something bought using her credit card.

## What happened

In September 2013, Mrs D purchased holiday club membership from a business called Club La Costa ("the Supplier"). This cost £18,267 and was paid by Mrs D trading in an existing timeshare and paying £7,267 on her Barclaycard. But this credit card payment was not made directly to the Supplier, rather it went to a different business, "FNTC".

In August 2019, using a professional representative ("PR"), Mrs D made a claim to Barclaycard under ss.75 and 140A of the Consumer Credit Act 1974 ("CCA"). In short, PR said the Supplier made misrepresentations at the time of the sale that, under s.75 CCA, Barclaycard was jointly responsible to answer. PR also said there was an unfair debtor-creditor relationship arising out of the sale that, under s.140A CCA, Barclaycard was also responsible to answer.[1]

Barclaycard responded in September 2019 to say there was not enough to conclude that there was either a misrepresentation or breach of contract for which it was jointly responsible. It said it did not need to pay anything to Mrs D under s.75 CCA, but explained she could refer her complaint to our service if she disagreed.

After PR referred Mrs D's complaint to our service, one of our investigators considered it, but did not think Barclaycard needed to do anything further. He thought that because Mrs D's card payment had been made in favour of FNTC, and not the Supplier, the provisions of the CCA to which PR referred did not operate in the way PR argued.

PR responded to our investigator to say it disagreed with the outcome. It did not disagree with our investigator's reading of the CCA, but said that as the correct legal answer did not lead to a fair outcome, the law should be disregarded in this complaint. Mrs D also provided a witness statement setting out her memories of the sale.

## What I have 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) law and regulations;*
> *(b) regulators' rules, guidance and standards;*

[1] The letter of claim says that it was made under s.75 CCA, but PR also referred to s.140A CCA. Reading it as a whole, I think PR did allege that there was an unfair debtor-creditor relationship

*(c) codes of practice; and*

*(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time."*

PR brought a claim on Mrs D's behalf under ss.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"*

An agreement is a s.11(1)(b) restricted-use credit agreement if it is a regulated CCA agreement used "*to finance a transaction between the debtor and a person (the "supplier") other than the creditor*".

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 lender (here Barclaycard) to be liable to the borrower (here Mrs D) for the misrepresentations of the supplier (here the Supplier). But, on the face of it, there were no such arrangements in place at the relevant times as the Supplier was not paid directly using the credit card, rather the payments were taken by FNTC.

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 had 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 agreement in circumstances where FNTC took payment on a credit card in relation to the purchase of timeshare membership from the Supplier. 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 Mrs D's case are very similar. Here, the same businesses were involved and payment was taken in the same way. So, based on the judgment in Steiner, 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 the Supplier was not paid under an agreement involving Barclaycard.

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 Mrs D and the Supplier affected the fairness of the debtor-creditor relationship if there was a valid D-C-S agreement in place. And, as already explained, I do not think such an arrangement was in place, nor had Mrs D suggested there was an unfair relationship for any other reason.

It follows that I do not think the CCA applied to the claims PR advanced on Mrs D's behalf in the way PR suggested.

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 do not think it would be fair to make Barclaycard responsible for the Supplier's alleged failures when the law does not impose such a liability – I cannot see that Barclaycard and the Supplier were connected in any way. I have also thought about what Mrs D has said about her memories of the sale, but I cannot see how they mean it would be fair or reasonable to hold Barclaycard responsible for the Supplier's alleged failings.

## My final decision

I do not uphold Mrs D's complaint against Barclays Bank UK PLC, trading as Barclaycard.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs D to accept or reject my decision before 11 June 2024.

Mark Hutchings
**Ombudsman**