DRN-4517086

## The complaint

The estate of Mr C says The Co-operative Bank Plc ('Co-op') has unfairly declined a claim it made under section 75 of the Consumer Credit Act 1974 ('CCA').

## What happened

In 2013, Mr C and his wife, Mrs C, paid £4,896 to buy a holiday club membership from a company I'll call 'Business 1'. Mr C used his Co-op credit card account to make the first payment of £979.20 on 11 February 2013. However, the credit card payment wasn't made to Business 1. Instead, it was made to a different business: 'FNTC'.

In 2015, Mr and Mrs C paid £5,080 to purchase 4,000 additional points for the same holiday club from Business 1. This time, Mr C used his Co-op credit card account to pay the full amount on 13 October 2015. Again, the payment was made to FNTC.

Although Mr C purchased the membership and additional points with Mrs C, the credit card account was in his name only. This means that Mr C – and then his estate – is the only eligible complainant. I've therefore referred to just Mr C below.

A professional representative ('PR') – first, acting on Mr C's behalf and instructions, and then, on behalf of his estate – wrote to The Co-op to make a claim under section 75 of the CCA. PR said Business 1 had misrepresented the membership benefits to Mr C and failed to tell him key information about the membership. And it said Business 1 had applied undue pressure on both occasions.

After much back and forth, The Co-op ultimately declined the claim.

One of our investigators didn't think this was unfair. She didn't think there was a debtor-creditor-supplier agreement ('DCS Agreement') between Mr C, The Co-op and Business 1 because the payments had been made to FNTC. The existence of such an agreement is an essential element of any claim under section 75 of the CCA.

PR asked that an ombudsman make a final decision.

## 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 considering what is, in my opinion, fair and reasonable in all the circumstances of the case, I'm required by DISP 3.6.3 R 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.'

While I appreciate that PR has only explicitly referred to section 75 of the CCA, some of the allegations it's made don't fall neatly (or at all) within the scope of a section 75 claim. I therefore think it's fair and reasonable to consider this complaint with section 140A of the CCA in mind too.

Below, I've set out the relevant law.

The law

Section 75 protects consumers who buy goods and services on credit. It says:

'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.'

Section 12(b) says that a DCS 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 falls within section 11(1)(b) if it's a regulated consumer credit agreement that 'finance[s] a transaction between the debtor and a person (the "supplier") other than the creditor'.

Section 140A says:

'(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).'

Section 140C(4) says the reference to a 'related agreement' means a 'linked transaction in relation to the main agreement'. And section 19 says a 'linked transaction' is:

'A transaction entered into by the debtor…with any other person ("the other party")…in relation to an actual or prospective regulated agreement (the "principal agreement") of which it does not form part if—

(a) …
(b) the principal agreement is a debtor-creditor-supplier agreement and the transaction is financed, or to be financed, by the principal agreement;

(c) …'

Put simply, for a claim under section 75 and/or section 140A to get off the ground, the consumer must first show that there is a DCS Agreement.

Was there a DCS Agreement between Mr C, The Co-op and Business 1?

Our investigator didn't think there was a DCS Agreement between Mr C, The Co-op and Business 1. I agree and I'll explain why.

On 10 October 2022, the High Court handed down its judgment in the appeal of *Steiner v National Westminster Bank plc* [2022] EWHC 2519. The facts of that case are very similar to this complaint.

In *Steiner*, a husband and wife had entered into an agreement with a timeshare provider to purchase from it the right to participate in a timeshare scheme for £14,000. The husband, Mr Steiner, had used his NatWest credit card account to pay the full amount. However, the payments weren't made to the timeshare provider. Instead, they were made to FNTC. The estate of the late Mr Steiner brought a claim against NatWest under sections 56, 75 and 140A of the CCA. However, the claim was dismissed at first instance on the basis that the payment to FNTC meant there wasn't a DCS Agreement. The appeal to the High Court was dismissed for essentially the same reason.

Given the obvious similarities between *Steiner* and this complaint, I think a court would reach the same conclusion and say there wasn't a DCS Agreement in this case and, consequently, dismiss any claim under section 75 of the CCA. Likewise, a court could only consider whether the agreement between Mr C and Business 1 affected the fairness of the debtor-creditor relationship under section 140A if there was a DCS Agreement, which there wasn't in this case. PR hasn't alleged that there was an unfair relationship for any other reason.

In response to our investigator's assessment, PR said it wasn't fair to strictly apply *Steiner* to this case. It said I should, as I can, depart from the relevant law, to avoid an unfair outcome. PR says there was no reason for Mr C to suspect that he wasn't paying Business 1 directly or that he wouldn't have the statutory protections afforded by the CCA. And, put simply, it says the *Steiner* judgment was wrong.

As I've explained above, I must determine this complaint by reference to what I think is fair and reasonable in all the circumstances of this case. PR may think that the High Court erred in *Steiner*, but unless and until another court agrees, the judgment must be construed as an accurate statement of the relevant law. And I don't think it's unfair to apply it in this case. On the contrary, I think it would be unfair to say The Co-op is answerable for any alleged wrongdoing by Business 1 when the law doesn't impose such a liability.

## My final decision

For the reasons given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 22 April 2024.

Christopher Reeves
**Ombudsman**