

## **The Complaint**

Mr D's complaint is, in essence, that Barclays Bank UK PLC (trading as Barclaycard) (the 'Lender') acted unfairly and unreasonably under the Consumer Credit Act 1974 (as amended) (the 'CCA') in relation to a number of timeshare purchases.

## **Background to the Complaint**

Mr D purchased various types of timeshare membership from a timeshare provider (the 'Supplier') in 2011, 2012, 2013 and 2015. And he used a credit card provided by the Lender (the 'Credit Agreement') to help pay for the purchases in 2011 and 2013 by making payments to a third party ('TP').

In June 2018, Mr D – using a professional representative (the 'PR') – wrote to the Lender to complain about all four of the purchases he made between 2011 and 2015 (the 'Letter of Complaint').

In response, the Lender treated the Letter of Complaint as claims under Section 75 of the CCA and wrote back shortly afterwards to say that there wasn't the right arrangement in place to make such claims in relation to the purchases in 2011 and 2013. The Lender also told the PR that Mr D hadn't used his credit card to help pay for the purchases in either 2012 or 2015.

A complaint was then referred to the Financial Ombudsman Service. It was looked at by an Investigator who, having only considered the merits of the complaint to the extent that they concerned the purchases in 2011 and 2013, issued an opinion rejecting it.

The complaint was then reviewed by another Investigator who, having also only considered the merits of the complaint to the extent that they concerned the purchases in 2011 and 2013, didn't uphold it. In light of a High Court case in the name of *Steiner v National Westminster Bank plc* [2022] EWHC 2519 ('*Steiner*'), he wasn't persuaded that there was the right arrangement in place for the purposes of the CCA to hold the Lender responsible for what had allegedly gone wrong with the relevant purchases.

Mr D disagreed with the most recent Investigator's opinion. And as the complaint couldn't be resolved informally, it was referred for an ombudsman's decision – which is why it was passed to me.

## My Findings

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

And having done that, I don't think this complaint should be upheld.

As the most recent Investigator said in his assessment, Mr D appears to have made four purchases from the Supplier between 2011 and 2015. But as there isn't enough evidence that he used his credit card from the Lender to help pay for the purchases he made in 2012 and 2015 (despite the opportunities he and the PR have had to provide such evidence), I can't see that the protections afforded to consumers by the CCA apply to those purchases.

With that said, it isn't entirely clear, from the Letter of Complaint, which provision(s) of the CCA the PR and Mr D were or are relying on for the purposes of this complaint. But I don't think that really matters here because, whether Mr D was trying to make a claim under Section 75 of the CCA or a complaint about an unfair credit relationship under Section 140A of that Act, for reasons I'll come on to, I still don't think this complaint should succeed.

The CCA introduced a regime of connected lender liability under Sections 56, 75 and 140A that afforded consumers (like Mr D) a right of recourse against lenders (like the Lender) that provide the finance for the acquisition of goods or services from suppliers (like the Supplier).

However, in order to engage the Lender's liability under those sections of the CCA in this particular complaint, one of the pre-conditions is the existence of a relevant debtor-creditor-supplier agreement ('DCS Agreement').

Put simply, if Mr D's complaint (given his reasons for it insofar as it concerns the timeshares he purchased in 2011 and 2013) is to get off the ground, there must have been a DCS Agreement in place at the right time.

On 10 October 2022, the High Court handed down its judgment in *Steiner*. 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 credit card account to pay the full amount. However, the payments weren't made to the timeshare provider. Instead, they were made to the same third party as TP in this complaint. The estate of the late Mr Steiner brought a claim against his credit card provider under Sections 56, 75 and 140A of the CCA. However, the claim was dismissed on the basis that the payment to the third party meant that there wasn't a DCS Agreement.

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 place at the right time in this complaint and, consequently, dismiss any claim under Section 75 of the CCA. Likewise, as the PR or Mr D haven't alleged that there was an unfair credit relationship between him and the Lender for reasons that relate directly to the acts and/or omissions of the Lender (focusing, instead, on the acts and/or omissions of the Supplier at the relevant times), a court could only consider whether the credit relationship between him and the Lender under the Credit Agreement was unfair to him under Section 140A if there was a DCS Agreement, which there wasn't on this occasion.

Overall, therefore, as I can't see any other reason why there was a DCS Agreement in either 2011 or 2013 given the facts and circumstances of this complaint, I don't think it would be fair or reasonable to find that the Lender bears responsibility for the acts and/or omissions of the Supplier when the law doesn't impose such a liability on the Lender in the absence of a relevant connection between it and the Supplier.

### **My Final Decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 August 2024.

Morgan Rees  
**Ombudsman**