DRN-4587161

The complaint

Mr G has complained that Lloyds Bank PLC ("Lloyds") didn't fairly or reasonably deal with claims under the Consumer Credit Act 1974 ("CCA") in relation to a holiday product bought using his credit card.

What happened

In November 2013, Mr G purchased holiday club membership from a business I'll call "Business D". It cost £7,000 and it was paid for by Mr G – in part – using his Lloyds credit card.

The purchase agreement entered into by Mr G was made between him and Business D. However, the credit card payment wasn't made directly to Business D, rather it went to a different business I'll call "Business F".

In January 2022, using a professional representative ("PR"), Mr G made a claim to Lloyds under section 75 of the CCA. The reasons for the claim are familiar to both sides so I don't intend to repeat them in detail here. But, in summary, Mr G said Business D made misrepresentations at the time of sale and that, under section 75 of the CCA, Lloyds was jointly responsible to answer for them.

Lloyds asked PR to submit further evidence to support its claim. As this information was not forthcoming, the claim was closed in April 2022.

PR referred the complaint to our service in February 2023. In March 2023, following receipt of correspondence concerning this complaint from our service, Lloyds issued a final response letter. In short, Lloyds said that based on the information it had been given it was declining the claim.

Unhappy with this response, PR referred the matter back to our service for an investigation.

One of our investigators looked into matters and issued their findings in January 2024. In short, our investigator said there wasn't the right arrangement in place to make such a claim because Mr G hadn't used his credit card to pay Business D directly.

PR disagreed with our investigator's findings. And, as an informal resolution couldn't be reached, the complaint was referred for an ombudsman's 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 doing that, I'm required by DISP 3.6.4R of the Financial Conduct Authority's Handbook to take into account the:

> *"(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."

As I've said, PR made a claim under section 75 of the CCA for alleged pre-contractual misrepresentations by Business D. However, on my reading of this complaint, PR have also made a complaint about a credit relationship that was allegedly unfair to Mr G under section 140A of the CCA. I acknowledge that the crux of PR's letter to Lloyds in January 2022 doesn't expressly refer to section 140A. But a number of the allegations made in that letter don't fall neatly (or at all) into a section 75 claim. And as those allegations were repeated on referral to the Financial Ombudsman Service, given the nature of the relevant allegations, I think it is reasonable to consider this complaint with section 140A in mind.

Section 75(1) of the 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*".

Section 12(b) of the 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 section 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*".

Section 140A of the 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 of the CCA says that the reference in section 140A of the CCA to a 'related agreement' include a linked transaction in relation to the main agreement, which is defined in section 19 of the 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 there needs to be a D-C-S agreement in place for the lender (Lloyds) to be liable to the borrower (Mr G) for the alleged misrepresentations of the supplier (Business D). But, on the face of it, there was no such arrangement in place at the relevant time.

The law in this area was clarified by the High Court in Steiner v. National Westminster Bank plc [2022] EWHC 2519 (KB) ("Steiner").

The late Mr Steiner ("the Estate") paid for a timeshare provided by Club La Costa Vacation Club Ltd ("CLC") using his NatWest credit card. So, for the purposes of section 11(1)(b) of the CCA, NatWest was the creditor, the late Mr Steiner was the debtor and CLC was the supplier. But the payment of £14,000 was in fact taken by FNTC.

The Estate initially argued that the right arrangements were in place because there was a Deed of Trust between CLC and FNTC under which CLC would receive payment. But the High Court was not persuaded by this. On appeal, the Estate's claim sought to demonstrate that the credit agreement was made "under pre-existing arrangements", or in contemplation of "future arrangements" and extended to CLC under section 12(b) of the CCA.

But the High Court dismissed the appeal. And in doing so, the Court held that arrangements could not be "stretched so far as to mean that NatWest made its agreement with the late Mr Steiner under the Deed of Trust (of which it was presumably unaware) as well as under the Mastercard network." Therefore, the existence of the Trust Deed didn't help to create a valid D-C-S agreement for the purposes of the CCA.

The circumstances of Mr G's case are very similar to the circumstances in Steiner. In this case, Business F took payment for Mr G's purchase of Business D's holiday club memberships. 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 section 75 claim.

I say this because it seems to me to be difficult to argue that Lloyds entered into the credit agreement with Mr G under, or in contemplation of, any arrangements other than the relevant card network. And while there may well have been arrangements between Lloyds and Business D (the relevant card network) and arrangements between Business F and Business D (the Deed of Trust), as the High Court recognised in Steiner in "the natural and ordinary meaning of the words used in section 12(b) of the Act does not extend to saying that NatWest made its agreement with Mr Steiner under both the Mastercard network and the Trust Deed (or under both the Mastercard network and any other arrangements which parties to the Mastercard network might have with third parties)".

Under section 187 of the CCA, there are also ways in which there might exist a D-C-S agreement even if a supplier isn't paid directly using a credit card. For example, if Business F and Business D were 'associates' as defined by section 184 of the CCA, there might have been the right arrangement in place at the right time. I haven't seen anything to persuade me that's likely to have been the case here.

I've also thought about the claim made under section 140A of the CCA and whether a Court would conclude the relationship was unfair. However, a Court could only consider how the agreements between Mr G and Business D affected the fairness of the debtor-creditor relationship if there was a valid D-C-S agreement in place. And, as already explained, I don't think such an arrangement was in place, nor has PR on behalf of Mr G suggested there was an unfair relationship for any other reason.

In response to our investigator's findings, PR raised a number of points which I'll address in turn.

Firstly, PR has said that the court in Steiner was unaware of the nature of any contractual relationship between CLC and FNTC and, therefore, for the purposes of this complaint, it would be reasonable for our service to assume that the relationship was identical to the relationship outlined in another decision made by our service. In other words, PR says it seems reasonable to assume Business F was acting solely as a payment processor for Business D and, therefore, there was a D-C-S agreement in place at the right time.

However, I do not agree with this assumption. I say this because traditional payment processors act as a way for a supplier to receive its money. In Steiner the court set out various clauses within the Deed of Trust that indicate FNTC provided more than a financial transaction service. For example, Clause 4.1 of the Deed of Trust provided as follows:

"*The Trustee shall hold the Property upon trust to secure for the Members the rights of occupation in the Scheme Accommodation under and in accordance with and subject to the provisions of the Articles*."

Further, in Steiner the judge said:

"*There was no evidence before me as to the general practice as to the structure of time share arrangements, but it was not disputed that the use of a trustee in such an arrangement, while not required by law, is common in the United Kingdom and has as its purpose, as one would expect, the protection of consumers*."

Secondly, PR has cited another decision made by our service, but it is important to be clear that each case turns on its own facts. And, in this case, I haven't been provided with anything to suggest the services provided by Business F were any different to those set out in Steiner. With that being the case, I haven't seen anything to persuade me that Business F were acting solely as a payment processor. It follows that, for the reasons I've already explained, I do not think the right arrangements were in place to give rise to a valid section 75 or section 140A claim.

Thirdly, PR said that "*at the point of entering into the contract and paying for the product there was no reason for [Mr G] to distinguish who they were paying…the fact they were able to use their credit card on site when purchasing a timeshare from agents of the merchant supplier would give them no reason to suspect that their statutory protections had been removed".*

I accept Mr G may not have known what the payment being taken by Business F (rather than Business D) meant in terms of his rights under the CCA. But the issue here isn't about Mr G's knowledge, rather it's whether the technical legal arrangements are in place for Mr G to be able to make the claim he has done under the CCA. And, following the judgment in Steiner, I don't think the right arrangements were in place.

Finally, in response to our investigator's findings, PR said the Financial Ombudsman Service is dealing with complaints, not legal causes of action. And PR went on to say that our service is free to depart from the relevant case law when doing so would result in a fair and reasonable answer being reached. Under the rules set out above, I explained that I must take into account the law, but come to my own determination of what is fair and reasonable in any given complaint.

Here, for the reasons I've explained, I don't think it would be fair to make Lloyds responsible for Business D's alleged failures when the law didn't impose such a liability in the absence of a relevant connection between Lloyds and Business D.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 27 November 2024.

Ross Phillips
Ombudsman