

The complaint

Mr C has complained that Tesco Personal Finance PLC ('Tesco PF') unfairly turned down his claim made under Section 75 of the Consumer Credit Act 1974 (the 'CCA').

What happened

On 27 July 2018 (the 'Time of Sale') Mr C bought membership of a timeshare from a timeshare provider (the 'Supplier'). This membership had a term of 14 years with a purchase price of £8,996. But after trading in his existing membership, Mr C ended up paying £7,996. This amount was paid by other means.

In addition to the above membership, Mr C purchased an 11-month membership of the 'Premium Club'. This additional membership cost £1,000 and was paid for by Mr C on a credit card he held provided by Tesco PF. But the credit card payment was not made directly to the Supplier, rather than to a different business, 'FNTC'.

On 1 June 2022 Mr C, using a professional representative (the 'PR'), made a claim under Section 75 of the CCA to Tesco PF, stating the Supplier had made misrepresentations at the Time of Sale.

Tesco PF rejected his claim. It said that it had considered Mr C's claim under both the Chargeback Scheme and Section 75, but the claim had been made too late for it to be able to progress a chargeback. And it said there was no clear Debtor-Creditor-Supplier ('D-C-S') link, so there was no right to apply Section 75 to the transaction nor was it able to accept any liability for any breach of it.

Mr C was unhappy with Tesco PF's response to his CCA claim so referred a complaint to this Service where it was considered by an Investigator who did not think Mr C's complaint ought to be upheld. But the Investigator thought this without considering if there was a valid D-C-S link in place.

Mr C's complaint was then considered afresh by a second Investigator, who thought there was no D-C-S link present, so Tesco PF didn't need to do anything further in respect of Mr C's claim. The Investigator thought that because Mr C's card payment had been made in favour of FNTC and not the Supplier, so the provisions of the CCA to which the PR referred could not operate to impose a liability on Tesco PF.

The PR responded to say Mr C disagreed with the Investigator's view. It said, in summary, that the arrangements between the Supplier and FNTC would reasonably suggest that FNTC was acting in the capacity of a payment processor for the Supplier. And the Financial Ombudsman Service has found in similar circumstances that the D-C-S link had not been broken. So it asked for an Ombudsman to review the complaint.

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 Financial Conduct Authority's Handbook to take into account:

“(1) relevant:

- (a) law 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.”

PR brought a claim on Mr C's behalf under Section 75 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 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”*.

The upshot of this is that for a claim under Section 75 of the CCA, there needs to be a D-C-S agreement in place for the lender (here Tesco PF) to be liable to the borrower (here Mr C) 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 a timeshare provider¹. The court considered the arrangements between the parties and concluded that, in that instance, there was no D-C-S agreement in place. That was because any payment made to that timeshare provider was made outside of the credit card network, and therefore not made under pre-existing arrangements, or in contemplation of future arrangements, between that timeshare provider and the lender (in that case NatWest).

¹ This was a different timeshare provider than the Supplier

The circumstances of Mr C's case are very similar. Here, payment was taken in the same way by FNTC to fund a membership agreement between Mr C and the Supplier. 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 of the CCA claim as the Supplier was not paid under an agreement involving Tesco PF. It follows, I do not think Tesco PF acted unfairly in turning down the claim made.²

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. And whilst also being cognisant of other decisions made by other Ombudsmen, I must consider this complaint on the basis of the particular circumstances here.

PR has argued that I should not apply the judgment in Steiner as it leads to an unfair outcome. However, I do not think it would be fair to make Tesco PF responsible for the Supplier's alleged failures when the law does not impose such a liability – I cannot see that Tesco PF and the Supplier were connected in any way. So I do not think Tesco PF were unfair or unreasonable when it declined Mr C's claim under the provisions of the CCA, and I do not think it needs to do anything further to settle this complaint.

My final decision

I do not uphold Mr C's complaint against Tesco Personal Finance PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 December 2024.

Chris Riggs
Ombudsman

² This also means I have not considered PR's argument that the payment was effectively a deposit for the more expensive membership bought on the same day, as that purchase was also outside of any D-C-S agreement.