DRN-4734623

The Complaint

Mrs T says, in essence, that The Royal Bank of Scotland Plc (the 'Business') didn't act fairly or reasonably under certain provisions of the Consumer Credit Act 1974 (the 'CCA') in relation to timeshares she purchased in October 2013, April 2014, October that year and October 2015 (the 'Times of Sale').

Background to the Complaint

Mrs T (and her husband Mr T) purchased timeshares from a timeshare provider (the 'Supplier') at the Times of Sale. And they used a credit card in Mrs T's name provided by the Business (the 'Credit Agreement') to help pay for the purchases in April 2014, October that year and October 2015 by making a number of payments to a third party ('TP').

In December 2016, Mrs T wrote to the Business to make claims under Section 75 of the CCA in relation to the four purchases she made between October 2013 and October 2015. All of them were made on the basis that the Supplier had gone into liquidation.

In response, the Business wrote to Mrs T and asked her to set out her reasons for the claims. So, she did that in a letter to the Business in January 2017. It isn't necessary to repeat, in detail, the contents of that letter here as both sides are familiar with them. But, in summary, she said that there were misrepresentations by the Supplier at the Times of Sale and that she and Mr T weren't given certain information.

The Business went on to treat Mrs T's Section 75 claims as a complaint and sent her its final response in February 2017 rejecting it on the basis that (1) she couldn't rely on the protections in the CCA when it came to the purchase in October 2013 because she had used a debit card and (2) there wasn't the right arrangement in place to make the other three claims under Section 75.

A month or so later, Mrs T referred a complaint to the Financial Ombudsman Service. It was then looked at by an investigator who, without commenting on the underlying merits of Mrs T's allegations, issued an opinion finding that there was the right arrangement in place to engage Section 75 of the CCA because TP and one of the Supplier's wholly owned subsidiaries were connected via someone who was both a director of TP and counsel for and/or a secretary of the relevant subsidiary.

The complaint was then reviewed by another investigator who, having considered the information on file, 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*'), she wasn't persuaded that there was the right arrangement in place for the purposes of the CCA to hold the Business responsible for what had allegedly gone wrong with the purchases at the Times of Sale.

Mrs T disagreed with the most recent investigator's opinion because she thought it was unfair to expect consumers (like her) to know that they were paying TP rather than the Supplier. Mrs T also thought that a recent timeshare related judicial review (*R (on the application of Shawbrook Bank Ltd) v Financial Ombudsman Service Ltd* and *R (on the application of Clydesdale Financial Services Ltd (t/a Barclays Partner Finance)) v Financial Ombudsman Service* [2023] EWHC 1069 (Admin) ('*Shawbrook & BPF v FOS*') was relevant to the merits of her complaint.

As the complaint couldn't be resolved informally, it was referred for an ombudsman's decision – which is why it was passed to me.

I issued a Provisional Decision ('PD') on 11 March 2024 rejecting Mrs T's complaint on the basis that there wasn't the right arrangement in place to hold the Business responsible for what she says went wrong when she was sold the timeshares in question.

Neither side had anything further to add to the complaint in response to my PD. So, it was passed back to me for a Final Decision.

My Findings

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

Having done that, I still don't think this complaint should be upheld – which I continue to realise will be disappointing for Mrs T.

But before I explain why, I want to make it clear (as I did in my PD) that this decision only deals with Mrs T's complaint insofar as it concerns the purchases in April 2014, October that year and October 2015. As she didn't use the relevant credit card to help pay for the purchase she made in October 2013, the relevant provisions of the CCA (that I'll come on to) don't apply to it.

As I said in my PD, the CCA introduced a regime of connected lender liability under Sections 56, 75 and 140A that afforded consumers (like Mrs T) a right of recourse against lenders (like the Business) that provide the finance for the acquisition of goods or services from suppliers (like the Supplier).

However, in order to engage the Business' 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 Mrs T's complaint (given her reasons for it) is to get off the ground, there must be a DCS Agreement. It doesn't matter that she wasn't aware at the Times of Sale that paying TP rather than the Supplier directly might have implications on the success of a complaint in the future. And it also doesn't matter that the High Court found in favour of the Financial Ombudsman Service overall in *Shawbrook & BPF v FOS* – which concerned the Final Decisions of ombudsmen who decided that, in two particular complaints, asset-backed timeshares had been mis-sold.

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 don't think there was a DCS Agreement in place at the right time for the purposes of this complaint.

As I've said before, under Section 187 of the CCA, there are also ways in which there might exist a DCS Agreement even if a supplier isn't paid directly using a credit card. For example, if the Supplier and TP were 'associates' as defined by Section 184 of the CCA, there might have been the right arrangement in place at the right time.

I can't see that anyone (whether individually or as a group) controlled both the Supplier and TP. I continued to acknowledge that TP and one of the Supplier's wholly owned subsidiaries appeared to have been connected via someone who seems to have been both one of TP's directors and counsel for and/or a secretary of the relevant subsidiary. But I still haven't seen enough to persuade me that the individual in question had control over both entities – nor that the individual had control over both the Supplier and TP as a result. And as I haven't seen anything else to persuade me that Section 187 is likely to matter here given the facts and circumstances of this complaint, I don't think it does.

Overall, therefore, I don't think it would be fair or reasonable to find that the Business bears responsibility for the Supplier's alleged failings at the Times of Sale.

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 Mrs T to accept or reject my decision before 22 May 2024.

Morgan Rees
Ombudsman