DRN-4792547

The complaint

Mr B complains that National Westminster Bank Plc ('NatWest') acted unfairly and unreasonably in respect of a complaint he raised about how parts of the Consumer Credit Act 1974 ('CCA') related to something he bought using his NatWest credit card.

What happened

Mr B, together with another, purchased membership of a timeshare product from a timeshare provider (the 'Supplier') on 17 September 2018 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy membership with 1,820 timeshare points at a cost of £25,029 (the 'Purchase Agreement'). But after trading in an existing timeshare product, Mr B ended up paying £7,349 for membership of the timeshare product.

Mr B paid for the timeshare product using his NatWest credit card[1]. But this credit card payment wasn't made directly to the Supplier. Rather, it went to a different business who I'll refer to as 'FNTC'.

In September 2019, using a professional representative (the 'PR'), Mr B made a claim to NatWest under s.75 CCA. In short, the PR said the Supplier made misrepresentations at the Time of Sale that, under s.75 CCA, NatWest was jointly responsible to answer.

NatWest responded to the claim in October 2019 and said it wasn't responsible to answer the claim made as Mr B hadn't paid the Supplier directly. Rather, the payment had gone to a third party – FNTC. NatWest said this meant s.75 CCA didn't apply in the way the PR argued it could.

In response, the PR suggested that NatWest further explore the relationship between the Supplier and FNTC on the basis it believed the requisite link would be determined in accordance with the CCA.

In November 2019, NatWest issued its final response reiterating its belief that there was no debtor-creditor-supplier agreement linking the various parties, as required under the CCA. And because of that, s.75 CCA didn't apply. Consequently, NatWest said it was unable to investigate Mr B's claim further and had no liability under s.75 CCA.

In April 2020, the PR referred Mr B's complaint to the Financial Ombudsman Service. One of our investigators considered the complaint but didn't think NatWest needed to do anything further. The investigator didn't think NatWest was likely to have to do anything under the relevant provisions of the CCA as the payment made using Mr B's credit card didn't go to the Supplier directly. Rather, it went to FNTC which meant, following the Court's judgment in 'Steiner'[2], there wasn't the required arrangement in place for NatWest to have to consider allegations about the Supplier's misconduct.

In response, the PR disagreed with the investigator and wanted an ombudsman to review the complaint. The PR argued that simply following the judgment in Steiner didn't lead to a fair or reasonable outcome for Mr B, so the ombudsman should depart from the law. The PR further argued that the time that had elapsed since Mr B first raised his claim with NatWest,

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[1] Although Mr B brought this alongside someone else, as the credit card used was in his sole name, only he is able to make this complaint.

[2] *Steiner v. National Westminster Bank plc* [2022] EWHC 2519 (KB) ('Steiner')

meant that his claim had been prejudiced by the subsequent judgment in Steiner. The PR referenced various other legislation to support its arguments.

As the parties didn't agree with the investigator's findings, Mr B's complaint has been passed to me for a 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.

In doing so, I'm required by DISP 3.6.4 R of the FCA Handbook to take into account:

> *"(1) relevant:*
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> (a) Law and regulations;
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> (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."*

The PR made a complaint on Mr B's behalf, pointing to the operation of s.75 CCA. I think it's 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 debtor-creditor-supplier ('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 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 there needs to be a DCS agreement in place for the lender (here that's NatWest) to be liable to the borrower (here that's Mr B) for the misrepresentations of the supplier (here that's the Supplier) under c.75 CCA. But, on the face of it, there was no such arrangement in place at the relevant time as the Supplier wasn't paid directly using Mr B's credit card. Rather, the payment was taken by FNTC.

There are ways in which there can be a DCS agreement in place, even if the Supplier isn't paid directly using a credit card. The investigator pointed to the judgment in Steiner, where it was considered whether there was a DCS agreement in circumstances where FNTC took payment on a credit card in relation to the purchase of timeshare membership from another timeshare supplier linked to the one here. The court considered the arrangements between the parties and concluded that, as the payment to that supplier was made outside of the credit card network, in that instance there wasn't a DCS agreement in place.

The circumstances of Mr B's case are very similar. So, based on the judgment in Steiner, I think a court would come to a similar conclusion and say that there was no DCS agreement

in place as any payment made to the Supplier was outside the card network and, in turn, no valid s.75 CCA claim. I'll explain further.

In Steiner, payment was taken for timeshare membership. But rather than the claimant's credit card being used to pay the timeshare supplier directly, payment was actually taken by a trustee (in that case it was also FNTC). There was a deed of trust between FNTC and that timeshare supplier, such that the timeshare supplier was a beneficiary under the trust. The Court considered the meaning of the words in s.12 CCA *"pre-existing arrangements, or in contemplation of future arrangements"* and concluded that the central issue was whether the credit agreement (i.e. the credit card) was granted by the lender under pre-existing arrangements or in contemplation of future arrangements between it and the supplier, rather than the nature of the arrangements at the time of the purchase. The Court concluded that it was not likely that the lender issued the credit card in contemplation of arrangements outside of, and in addition to, the credit card network, i.e. the trust deed between FNTC and the timeshare supplier as well as the card network involving FNTC.

In Mr B's case, I also find it unlikely that NatWest granted Mr B a credit card in the knowledge of the trust deed between the Supplier and FNTC, nor in contemplation of the existence of any such trust deed. That is the important issue with this case and not the precise arrangement by which FNTC passed funds (if it did) to the Supplier when the card was used. It follows, I don't think there was a DCS arrangement in place involving NatWest and the Supplier here.

I have also considered whether the Supplier and FNTC were 'associates' as defined by the CCA. But any common obligations and relationships between the various parties seem to arise only under the trust deed rather than the entire operations of each business being controlled by the same people. So, I can't see that the Supplier and FNTC were 'associates' under the CCA. And it follows that I don't think s.75 CCA applies to the complaint submitted by the PR on Mr B's behalf in the way required to make NatWest responsible for the Supplier's alleged actions.

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. Here, I don't think it would be fair to make NatWest responsible for the Supplier's alleged failures when the law doesn't impose such a liability. Further, I can't see that NatWest and the Supplier were connected in any way, nor is there any other reason to suggest NatWest should be responsible for, or connected to, the Supplier's alleged failings.

I acknowledge what the PR has said about the time elapsed since Mr B's claim was first raised. And, in particular, how the subsequent judgment in Steiner has, in its opinion, impacted upon the outcome of that claim. In its response to the investigator's findings, the PR says:

> *"It is clear that the law relating to the debtor-creditor-supplier ("DCS") relationship has changed following the decision in 2022 in Steiner."*

I think it's important to recognise that the judgment in Steiner didn't change the law; it merely served to clarify existing legislation at the time. So, I don't think this particular argument helps Mr B's case here.

It follows that I don't think NatWest needs to do anything further to answer Mr B's complaint.

My final decision

For the reasons set out above, I don't uphold Mr B's complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 April 2025.

Dave Morgan
Ombudsman