DRN-5371535

The complaint

Mrs C complains that Creation Financial Services Limited has treated her unfairly in relation to a payment she made on her Creation credit card.

What happened

In June 2022 Mrs C and her husband contracted with a third-party timeshare relinquishments company (I'll call "Firm A") to help them exit their timeshare and pursue their timeshare provider for compensation. (I'll refer to this throughout as "the relinquishment contract".

Mrs C paid £7,145 using her credit card and the remaining £21,335 was funded through a bank transfer.

As the basis of this complaint stems from Mrs C's credit card payment, she is the relevant party to the complaint and so I will refer to Mrs C throughout.

Mrs C believes the contract was misrepresented to her by Firm A and that it didn't provide any service in exchange for the fees paid. In August 2024 Mrs C approached her credit card provider, Creation, to make a "*like claim*" under section 75 of the Consumer Credit Act 1974 (CCA).

Creation considered the matter and decided it didn't have any liability in these circumstances. So it told Mrs C it wouldn't be refunding any of the money she had paid.

Mrs C complained about this and was unhappy with the response, so she referred her complaint to our service. Our investigator considered the complaint, but they didn't think Creation had treated Mrs C unfairly. Mrs C was unhappy with this and asked for an ombudsman to review the complaint and reach a final 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.

I'd like to start by explaining that in this decision I can only address the actions of Creation and whether it acted fairly in trying to recover the funds Mrs C paid. I can't look at the actions of Firm A or any other party Mrs C had involvement with in her efforts to end the timeshare agreement and seek compensation.

Having done so, I don't think Creation has acted unfairly in this matter and therefore I cannot uphold this complaint. I appreciate this will be disappointing for Mrs C and I do sympathise with the circumstances surrounding this complaint.

Payment processing

Mrs C has argued that she's due a refund because of the "*Payment services regulator – new rules on fraud which came in from 7 October 2024*." However, these rules do not apply retrospectively and do not apply to credit card transactions. In addition, Mrs C made the bank transfer from another provider to Firm B. So, this isn't something I could hold Creation liable for in any event.

There were two possible routes which Creation could have explored to recover the funds Mrs C paid under the relinquishment contract. Firstly, through raising a chargeback with the card scheme operator (which Creation could only do in relation to the £7,145 payment from Mrs C's Creation credit card). It could also explore its liability to repay the full amount under s.75 CCA "*like claim*".

Chargeback

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. It allows customers to ask for a transaction to be refunded in a number of situations.

There's no automatic right to a chargeback; the chargeback process doesn't give consumers legal rights; and chargeback is not a guaranteed method of getting a refund because chargebacks may be defended by the merchant. This is because the rules, set out by the card scheme lay down strict conditions which must be satisfied for a chargeback claim to succeed. If a financial business thinks that a claim won't be successful, it doesn't have to raise a chargeback.

Some of the strict conditions relate to the time limits for raising a chargeback. The time limits for goods and services not provided can relate to when the agreement was entered into or when the service was due to complete (but there was still an overall time limit for this). The transaction took place in June 2022 and Mrs C didn't raise the dispute until August 2024. I think that by this time she was out of time to raise a chargeback under the ground of goods/ services not provided. I therefore don't think a chargeback would have had a reasonable prospect of success and that Creation hasn't acted unfairly in its decision not to raise a chargeback.

S.75 CCA

When something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there's been a breach of contract or misrepresentation.

Its clear Mrs C feels that there has been a breach of contract as she's argued that the contract wasn't performed. She's also argued the contract was misrepresented to her as she had already exited her timeshare. However, she claims she was told by Firm A that she would be liable for fees relating to it and that she still needed its services to legally end the timeshare agreement.

There are a number of criteria that need to be met in order for Mrs C to have a valid s.75 claim. One of which is she needs a valid debtor-creditor-supplier ("DCS") arrangement in place. Typically, this would mean the person who paid for the goods or services (the debtor) would pay the funds directly to the supplier (Firm A) and it would be funded (or in part using) funds provided by the creditor (Creation). Therefore, the person who paid for the goods or service would have a contractual relationship with whoever supplied the goods or services and the creditor.

This is the key matter in dispute here as although Mrs C argues there is a DCS arrangement in place, Creation argues that there isn't. The reason for this is Mrs C paid another party (who I'll call "Firm B") and not Firm A for the service being provided. Firm B is clearly listed on Mrs C's credit card statement as the entity being paid and she was provided with a receipt from Firm B. (Firm B is also listed on Mrs C's bank transfer and on the receipt from this transaction). In order to demonstrate she has a claim, Mrs C therefore needs to show that despite the involvement of Firm B, she has a DCS arrangement in place. I have gone on to consider whether the evidence available suggests Mrs C has demonstrated this.

I think it's important to set out that there are some limited circumstances where another party may not break the DCS arrangement. Under s.187 CCA a:

> "*consumer credit agreement shall be treated as entered into under pre-existing arrangements between a creditor and a supplier if it is entered into in accordance with, or in furtherance of, arrangements previously made between persons mentioned in subsection (4)(a), (b) or (c).*"

And subsection 4 states goes on to explain that persons are:

> *"(a)the creditor and the supplier;*
> *(b)one of them and an associate of the other's;*
> *(c)an associate of one and an associate of the other's."*

Essentially what this means is there are prescribed situations where the involvement of a fourth party may not break the DCS chain.

"*Associates*" are tightly defined in s.184 of the Act. This definition includes a number of sub-definitions all of which I've considered. The most likely to be argued on the facts of this case is:

"A body corporate is an associate of another body corporate—

> *(a)if the same person is a controller of both, or a person is a controller of one and persons who are her associates, or she and persons who are her associates, are controllers of the other"*

I've considered this definition and the surrounding relevant parts of the CCA. Having done so, I'm not persuaded Mrs C has demonstrated that Firm A and Firm B were associates under the Act. As such I'm not persuaded she has made out her claim to Creation. I've seen no persuasive evidence that Firm A and Firm B were "*associates"*" under the strict definition in the Act. I also haven't seen any persuasive evidence that Firm B acted as a payment processor for Firm A.

So, I'm satisfied that DCS is not made out here. As such I don't think Creation can be held responsible for the loss Mrs C has incurred, irrespective of whether breach of contract or misrepresentation has taken place. So I don't think Creation acted unfairly in declining Mrs C's s75 CCA claim.

I can see Mrs C has put a great deal of effort into arguing her claim and I want to address the additional points she's raised below.

Mrs C believes Firm A and Firm B are intrinsically linked based on the paperwork she has submitted. Specifically, that her paperwork from Firm B states that the payment made was for the contract with Firm A. Mrs C is correct that the paperwork from Firm B does state that the payment was for a case reference, which is the reference detailed on her contract with Firm A. The fact that there is some form of linkage likely between the firms is not in dispute.

However, to hold Creation liable under connected lender liability in s.75 CCA, I would have to be satisfied that Firm A and Firm B met the definition of "*Associates*" under the Act. And as I've explained above, I've seen nothing persuasive which leads me to conclude that this definition has been met. The links between the paperwork or the "*coordinated transaction process*" Mrs C has referred to doesn't allow the definition to be met. Nor does her argument that Firm B was an agent of Firm A as this also doesn't meet the definition of "*Associates*" under the Act.

Mrs C has cited the case of Durkin v DSG Retail Ltd [2014] UKSC 21 as the authority that an intermediatory doesn't necessarily break DCS. Durkin case considered whether a claimant could rescind the credit agreement on the recission on the associated sale agreement funded by a point of sale loan. Key to this decision was that the loan served no other purpose than to fund the associated agreement (it was brokered for that purpose). In this case Mrs C used her credit card in part to finance the relinquishment contract. So it can't be argued that this was the only purpose of the underlying credit agreement and I don't think the Durkin case supports Mrs C's arguments or her claim.

Steiner v. National Westminster Bank plc [2022] EWHC 2519 is the current authority for the impact of an intermediatory on the DCS chain. In the Steiner case it was known that the other party who accepted payment (and was not the supplier) was a trustee under a deed of trust for which the supplier was the beneficiary. However, in Mrs C's case she's not shown that Firm B has acted as an intermediary. Rather, it's not entirely clear from the evidence I have what Firm B's role was. And in any event, in Steiner the court held that the claimant hadn't demonstrated that "*arrangements*" (s.12(b) CCA which defines a DCS agreement) stretched far enough to include the trustee. So I don't think this has an impact on her claim.

Mrs C has said she's seen other examples where customers have had their money refunded in the same or similar circumstances to this case. I appreciate there are situations where there are extra parties within arrangements and the DCS agreement is still in place as Mrs C suggests. However, for similar reasons as to those given by the Judge in Steiner, I'm not persuaded the arrangements were in place here to make out the DCS agreement.

I've considered Mrs C's complaint thoroughly and having done so, I can't say Creation has acted unfairly in its handling of her s.75 CCA claim.

The contract with Firm B

I can see from the information that Mrs C provided she also had a contract with Firm B directly for "*Contractually Agreed Payment of Professional Fees*". This states that Mrs C contracts to make the payment to Firm B and in turn Firm B will pay all the fees etc associated with Mrs B's case (giving the reference for the contract between Mrs C and Firm A).

Mrs C would have a DCS agreement in place here as she paid the credit card payment directly to Firm B. However, I've not seen anything to conclude there's has been a breach or misrepresentation by Firm B. Mrs C has said in her Complaint Form to our service, that it was Firm A who made misrepresentations to her (and so not Firm B). Her testimony at this time suggests she didn't have direct contact with Firm B. Whilst I don't know the full terms of the contract between Mrs C and Firm B, the information I have suggests that Firm B agreed to pay the fees associated with her case and I've not seen any evidence to demonstrate this was breached.

So for the reasons explained above, I don't think Mrs C has evidenced she meets the requirement for a s.75 CCA claim in relation to the contract with Firm A. And I don't think

she's evidenced a breach of contract or misrepresentation, based on the available evidence, with Firm B. I therefore don't think Creation acted unfairly in declining the claim.

My final decision

For the reasons explained, I don't uphold this complaint against Creation Financial Services Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 22 April 2025.

Claire Lisle
Ombudsman