DRN-5846884

The complaint

Mrs S has complained Marks & Spencer Financial Services Plc ("M&S") did not act fairly or reasonably in respect of a claim raised under s.75 of the Consumer Credit Act 1974 ("CCA") in relation to something bought using her M&S credit card.

What happened

In 2015, Mrs S, alongside another, purchased holiday club membership from a timeshare supplier ("the Supplier"). This cost £4,495 and was paid by Mrs S using her M&S credit card.[1] But this credit card payment was not made directly to the Supplier, rather it went to a different business, "FNTC".

In October 2023, using a professional representative ("PR"), Mrs S made a claim to M&S under s.75 CCA. In short, PR said the Supplier misrepresented matters at the time of the sale that, under s.75 CCA, M&S was jointly responsible to answer.

M&S responded to the claim in October 2023, asking for more information before it was able to answer the claim. But in December 2023 M&S said that any claim under s.75 CCA had been made too late under the provisions of the Limitation Act 1980 ("LA"), so it argued it did not need to answer the claim. PR responded to say it disagreed about M&S stance on the LA and asked it to reconsider the claim.

After voluminous correspondence between PR and M&S, in February 2025, Mrs S referred a complaint to our service that M&S had not properly considered the claim made under s.75 CCA.

One of our investigators considered the complaint, but did not think M&S needed to do anything further. She thought that M&S was not likely to have to do anything under s.75 CCA as the payment made using the card did not go to the Supplier directly, rather it went to FNTC. That meant, following the judgment in *Steiner v. National Westminster Bank plc* [2022] EWHC 2519 (KB) ("*Steiner*"), there were not the right arrangements in place for M&S to have to consider allegations about the Supplier's alleged misconduct.

PR responded to say Mrs S disagreed with our investigator and wanted an ombudsman to review the complaint. PR argued that FNTC acted as an agent for the Supplier when processing the payment and referred to the judgment in *Bank of Scotland v. Alfred Truman (a firm)* [2005] EWHC 583 ("*Truman*"). It also said that the judgment in *Steiner* was based on the facts of that case and applying it more broadly may overlook differences to Mrs S's complaint. PR also, for the first time, said that the facts of this complaint gave rise to an unfair credit relationship under s.140A CCA.

As the parties did not agree with our Investigator, this complaint has been passed to me for a decision.

[1] As the credit card was in Mrs S's sole name, only she is able to bring this complaint and I will refer to her throughout

What I have 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 so, I am required by DISP 3.6.4 R of the FCA 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 made a complaint on Mrs S's behalf, pointing to the operation of s.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 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 M&S) to be liable to the borrower (here Mrs S) for the misrepresentations of the supplier (here the Supplier) under s.75 CCA. But, on the face of it, there were no such arrangement 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 DCS agreement in place, even if the supplier is not paid directly using a credit card. Our 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 a different timeshare supplier to the Supplier in this complaint. 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 was not a DCS agreement in place.

The circumstances of Mrs S'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 of the card network and, in turn, no valid s.75 CCA claim. I will 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 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, not 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 Ms S's case, I find it unlikely that M&S granted Mrs S 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 in 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 do not think there was a DCS arrangement in place involving M&S, Mrs S and the Supplier. For the avoidance of doubt, this is due to my assessment of the legal relationships between all of the parties involved, rather than because of any similarly in the facts between this complaint and the facts underlying the judgment in *Steiner*.

I have also read the judgment in *Truman* and I note that the judge in *Steiner* considered the *Truman* judgment too, but did not find it was of much assistance in deciding that case. I also do not find it of much assistance as it does not go to the central issue in this case, the arrangements between M&S and the Supplier at the time the credit card agreement was entered into or whether it was entered into in contemplation of future arrangements. I do not think the question of whether FNTC was taking payments on the Supplier's behalf goes to that issue.

I also do not think the fact that Mrs S thought she was paying the Supplier and not FNTC goes to the issue in the complaint either. The issue here is not about Mrs S's knowledge, rather it is whether the technical legal arrangement was in place such that there was a DCS agreement. And, following the judgment in *Steiner*, I do not think the right arrangement was in place.

It follows that I do not think that s.75 CCA applies to the complaint PR advanced on Mrs S's behalf in the way required to make M&S responsible for the Supplier's actions. And as that is the case, I do not need to consider whether M&S also had a defence under the LA.

In response to our Investigator's view, PR has raised the possibility that there could be an unfair credit relationship as defined by s.140A CCA. I cannot see that that complaint has been explicitly raised with M&S before, not that it has answered such a complaint. However, I can see that PR has through this complaint referred to issues that can only properly be argued under that provision, as well as referring to a further court judgment that considered the operation of s.140A CCA. Given that, I think it is right that I give an answer to this part of the complaint.

However, under s.140A CCA, one can only consider how the agreements between Mrs S and the Supplier affected the fairness of the credit relationship if there was a valid DCS agreement in place. And, similarly, for the Supplier's actions to be attributable to M&S under

s.56 CCA, and therefore something that could cause an unfairness, there also needs to be a valid DCS agreement. However, as already explained, I do not think such an arrangement was in place. It follows, I do not think there could be an unfair credit relationship for the reasons put forward by PR.

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 do not think it would be fair to make M&S responsible for the Supplier's alleged failures when the law does not impose such a liability. Further, I cannot see that M&S and the Supplier were connected in any way nor is there any other reason to say M&S should be responsible for, or be connected to, the Supplier's alleged failings.

It follows that I do not think M&S needs to do anything further to answer Mrs S's complaint.

My final decision

I reject Mrs S's complaint against Marks & Spencer Financial Services Plc.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs S to accept or reject my decision before 28 October 2025.

Mark Hutchings
Ombudsman