DRN-4375434

The complaint

Mr L has complained that Lloyds Bank PLC ("Lloyds") unfairly turned down his claim made under the Consumer Credit Act 1974 ("CCA") about something bought using his Lloyds credit card.

What happened

In March 2017, Mr L, alongside another, purchased holiday club membership from a timeshare supplier ("the Supplier"). This cost £8,326 and was paid by Mr L using his Lloyds credit card.[1] But this credit card payment wasn't made directly to the Supplier, rather it went to a different business, "FNTC".

In August 2021, using a professional representative ("PR"), Mr L made a claim to Lloyds under ss.75 and 140A CCA. In short, PR said the Supplier made misrepresentations at the time of the sale that, under s.75 CCA, Lloyds was jointly responsible to answer. PR also said there was an unfair debtor-creditor relationship arising out of the sale that, under s.140A CCA, Lloyds were also responsible to answer. This was due to both the problems Mr L said there were with membership but also because the membership didn't set out timeshare rights in a specific property, meaning the membership breached an EU Directive. It also pointed to a Spanish court case that it said rendered the membership "null and void".

PR didn't receive a response to the claim and so, in October 2021, referred a complaint to our service that Lloyds hadn't properly considered the claim. After it did so, Lloyds responded to apologise for the time taken to investigate Mr L's claim and offered £100 for the delays, but it didn't give an answer to the claim.

One of our investigators considered the complaint, but didn't think Lloyds needed to do anything further. She thought the claims made under the CCA weren't ones that Lloyds needed to consider as the payment made using the card didn't 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 weren't the right arrangements in place for Lloyds to have to consider allegations about the Supplier's misconduct. She also said that she didn't think Spanish law applied to the timeshare, so she didn't think that meant the credit card agreement wasn't enforceable.

PR responded to say it disagreed with our investigator. It argued that Mr L wasn't aware at the time of sale that payment was going to be taken by a third party and that the Supplier hadn't explained this meant he would lose his protection under the CCA. Mr L didn't give the Supplier permission to take payment in this way. So Mr L asked for the matter to be looked at again by an ombudsman.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

[1] Mr L bought membership alongside his wife, but as the card used was in his name alone, only he is able to make this complaint.

reasonable in the circumstances of this complaint.

When doing so, I'm 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 brought a claim on Mr L's behalf under ss.75 and 140A 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 ("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*".

s.140A CCA states:

> *"(1)The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following –*
>
> > *(a) any of the terms of the agreement or of any related agreement;*
> > *(b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*
> > *(c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*
>
> *(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).*
>
> *(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done)*

by, or on behalf of, or in relation to, the creditor."

Section 140C CCA says that the reference in s.140A CCA to a 'related agreement' include a linked transaction in relation to the main agreement, which is defined in s.19 CCA as:

> *"(1) A transaction entered into by the debtor or hirer, or a relative of his, with any other person ("the other party"), except one for the provision of security, is a linked transaction in relation to an actual or prospective regulated agreement (the "principal agreement") of which it does not form part if -*
> *…*
> *(b) the principal agreement is a debtor-creditor-supplier agreement and the transaction is financed, or to be financed, by the principal agreement…"*

The upshot of this is that there needs to be a D-C-S agreement in place for the lender (here Lloyds) to be liable to the borrower (here Mr L) for the misrepresentations of the supplier (here the Supplier) under s.75 CCA. But, on the face of it, there were no such arrangements in place at the relevant times as the Supplier wasn't 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 isn't paid directly using a credit card. Our investigator pointed to the judgment in Steiner, in which it was 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 different timeshare supplier. 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 D-C-S agreement in place.

The circumstances of Mr L's case are very similar. Here, FNTC, acting as trustee, took payment on behalf of a timeshare supplier in the same way. 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 as any payment made to the Supplier was outside of the card network and, in turn, no valid s.75 CCA claim.

I've also thought about the claim made under s.140A CCA and whether a Court would conclude the relationship was unfair. However, a Court could only consider how the agreements between Mr L and the Supplier affected the fairness of the debtor-creditor relationship if there was a valid D-C-S agreement in place. And, as already explained, I don't think such an arrangement was in place, nor has Mr L suggested there was an unfair relationship for any other reason.

It follows that I don't think the CCA applies to the claims PR advanced on Mr L's behalf.

I've also considered what PR said about Mr L not knowing that the payment went to FNTC or not consenting to the payment being taken in that way. I've seen the three page purchase agreement signed by Mr L. On the first page it says the payment of £8,326 was due on the 13 April 2017 and it went on to say:

> "*By signing this agreement, you are agreeing to pay the purchase price above on the due date. All payments must be made in favour of FNTC-Diamond Resorts…*"

I've also seen that the credit card receipt provided by Mr L stated that payment was made, but also says "*Customer not present*". I think it's clear that Mr L agreed to make payment using his credit card and gave permission for payment to be taken the following month. I think Mr L was told the payment would be taken by FNTC, albeit that I accept he didn't know what this meant in terms of this rights under the CCA. But the issue here isn't about Mr L's

knowledge, rather it's whether the technical legal arrangements are in place for Mr L to be able to make the claims he has done under the CCA. And, following the judgment in Steiner, I don't think the right arrangements were in place.

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 Lloyds responsible for the Supplier's alleged failures when the law doesn't impose such a liability – I can't see that Lloyds and the Supplier were connected in any way nor is there any other reason to say Lloyds should be responsible for the Supplier's alleged failings.

Finally, I've considered PR's argument that the credit agreement was 'null and void' or unenforceable due to breaches of EU law. I don't think this is right for several reasons. First, the credit agreement in question was for a credit card and I don't think that agreement be set aside just because an agreement that may have been funded by the card could be rescinded. Secondly, PR has referred to a Spanish judgment and Spanish law that it says demonstrate how the EU Regulation should be interpreted. But Mr L's timeshare agreement states that it is governed by English law, so I fail to see how a Spanish judgment is of assistance here. Especially as PR hasn't pointed to how Mr L's timeshare agreement breached the relevant English law (the 2010 Timeshare Regulations), nor can I see how the relevant English laws could be breached.

It follows that I don't think Lloyds needs to answer the claims made.

My final decision

I don't uphold Mr L's complaint against Lloyds Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 December 2023.

Mark Hutchings
Ombudsman