DRN-4384519

The complaint

Mr R has complained that Lloyds Bank PLC ("Lloyds"), unfairly turned down his claim made about something bought using his credit card.

What happened

In 2017, Mr R, alongside his wife, purchased holiday club membership from a business I'll call "Business H". This cost £8,495 and was paid by Mr R making a payment of £5,000 using his Lloyds credit card and the balance paid by Mrs R using her credit card provided by a different lender.[1] But this credit card payment wasn't made directly to Business H, rather it went to a different business I'll call "Business F".

In 2022, using a professional representative ("PR"), Mr R made a claim to Lloyds under s.75 and s.140A of the Consumer Credit Act 1974 ("CCA"). In short, Mr R said Business H made misrepresentations at the time of the sale that, under s.75 CCA, Lloyds was jointly responsible to answer. He also said that Business H had breached the terms of the membership, again something Lloyds could be jointly liable for under s.75 CCA. And he said the timeshare was voidable due to a breach of Spanish law and the problems with the timeshare created an unfair debtor-creditor relationship under s.140A CCA.

Lloyds responded to Mr R, saying it wouldn't consider the claim until it knew whether Mrs R was making a similar claim in respect of her credit card payment. Unhappy with the response, he referred a complaint to our service that Lloyds hadn't properly considered his claim. After doing so, Lloyds said it didn't have enough to uphold the claims being made.

One of our investigators considered the complaint, but didn't think Lloyds needed to do anything further. She thought that there might not have been the right sorts of relationships in place to make claims under s.75 and 140A CCA, but even if there were, she didn't think the claims would have been successful. She also said he didn't think the timeshare agreement was voidable.

PR said that Mr R didn't agree with the view and asked for the matter to be looked at again by an ombudsman. It provided substantial submissions detailing problems it said there were with Business H membership. It also said that there were the right sorts of arrangements in place to make claims under the CCA as Business F was acting as trustee for Business H.

I considered the complaint and decided to issue a provisional decision because, although I agreed with our investigator that Lloyds didn't need to do anything further to resolve this complaint, I thought that for different reasons.

I explained that I considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And, when doing so, I'm required by DISP 3.6.4 R of the FCA Handbook to take into account:

"(1) relevant:

[1] In this decision, I'm only concerned with the payment made on Mr R's credit card, so only he is able to make this complaint

(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 R's behalf under provisions of the CCA. And I thought it was helpful to set out those 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…"

I thought the upshot of this is that there needed to be a D-C-S agreement in place for the lender (here Lloyds) to be liable to the borrower (here Mr R) for the misrepresentations or breaches of contract of the supplier (here Business H). And a D-C-S agreement was also needed if the Supplier's acts and/or omissions were to be assessed as part of an assessment of unfairness under s.140A CCA. But, on the face of it, there were no such arrangements in place at the relevant times as Business H wasn't paid directly using the credit card, rather the payments were taken by Business F.

I said 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. The law in this area had been clarified by the judgment in *Steiner v. National Westminster Bank plc* [2022] EWHC 2519 (KB) ("Steiner"). Steiner considered whether there was a D-C-S agreement in circumstances where Business F took payment on a credit card in relation to the purchase of timeshare membership from a business called "C". The court considered the arrangements between the parties and concluded that, as the payment to C was made outside of the credit card network, in that instance there wasn't a D-C-S agreement in place.

I thought the circumstances of Mr R's case were very similar. Here, the same business (Business F) took payment for Mr R's purchase of Business H holiday club memberships. So, based on the judgment in Steiner, I thought a court would come to a similar conclusion and say that there was no D-C-S agreement in place and, in turn, no valid s.75 CCA claim. I didn't think the position was changed because Business H directed payments be made to Business F or because Business F was acting as a trustee – that was the same position as in Steiner and I couldn't see either of those reasons meant a D-C-S agreement was in place.

I also considered whether there might be an unfair debtor-creditor relationship between Mr R and Lloyds arising out of the purchases. But again, I could only consider how the agreements between Mr R and Business H affected the fairness of the debtor-creditor relationship, if there was a valid D-C-S agreement in place. And, for the same reasons, I didn't think such an arrangement was in place, nor had Mr R suggested there was an unfair relationship for any other reason.

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 didn't think it would be fair to make Lloyds responsible for Business H's alleged failures when the law didn't impose such a liability – I couldn't see that Lloyds and Business H were connected in any way nor was there any other reason to say Lloyds should be responsible for Business H's failings.

Finally, PR said that the agreements with Business H were 'null and void' due to breaches of EU law and it pointed to a judgment of a Spanish court that it said was important. In short, PR said the Spanish judgment held that certain types of timeshares or holiday club memberships were held to be incompatible with Spanish law and the agreements were declared nullified. PR said the Spanish legislation was implementing an EU Directive, which also had effect within the UK. It said this means Mr R's membership, as well as the related credit agreement, are also 'null and void'. I disagreed for two reasons.

First, the credit agreement in question was for a credit card and that entire agreement

couldn't be set aside just because an agreement that may have been funded by the card could be rescinded. Secondly, Business H was a company incorporated in the British Virgin Islands and the agreement states that it is governed by the laws of the British Virgin Islands. I couldn't see why a Spanish court judgment would, or could, apply to the interpretation of these agreements.

I followed that I didn't think Lloyds need to answer the claims made.

Lloyds responded to my provisional decision to say it had nothing further to add.

PR responded on Mr R's behalf. It said when he bought the membership he provided his card details to Business H and gave it permission to take payment. At that time, he thought the payment was being made to Business H – PR provided evidence that showed Mr R wasn't present when payment was actually taken. PR also questioned whether Business H had a responsibility to tell Mr R that s.75 CCA protection would be removed by the way the payment was taken.

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.

Having considered everything, I still don't think Lloyds needs to do anything further to settle this complaint.

I've thought about what PR has said, but I don't think it makes a difference in this case. I think the issue is to decide the nature of the arrangements between the creditor, Lloyds, and the supplier, Business H, as set out in s.12(b) CCA. There were plainly arrangements between Lloyds and Business F, through the credit card scheme, and between Business F and Business H. But the question is whether Lloyds made its agreement with Mr R under, or in contemplation of, arrangements with Business H. Those arrangements would normally be via the credit card scheme, but that's not how Business H was paid.

Unfortunately for Mr R, his understanding of where the payment went or whom he was paying isn't something that falls to be considered under s.12(b) CCA. Rather, it's an assessment of whether the arrangements can give rise to a D-C-S agreement as required by the CCA. And, for the reasons set out above, I don't think there is. So I think it's fair for Lloyds to turn down Mr R's claim.

I've also considered whether Business H should have told Mr R that, because of the way payment was made, he lost the protection of s.75 CCA. But even if that was the case, it wouldn't make Lloyds responsible to answer a claim for what went wrong. And as Lloyds is the only business about which I can consider a complaint, I make no finding on this issue.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 November 2023.

Mark Hutchings
Ombudsman