DRN-4475719

The complaint

Mrs M has complained that Santander UK Plc should have paid compensation following complaints she made about purchases paid for using her Santander credit card.

What happened

In January 2012, Mr and Mrs M purchased holiday club membership from a business called Club La Costa ("the Supplier"). This cost £8,099[1] and was paid by Mrs M paying £4,000 on her Santander credit card and Mr paying £4,099 on his credit card provided by a different business. But this credit card payment wasn't made directly to the Supplier, rather it went to a different business, "FNTC".

In November 2019, using a professional representative ("PR"), Mrs M made a claim to Santander under ss.75 and 140A of the Consumer Credit Act 1974 ("CCA").[2] In short, PR said the Supplier made misrepresentations at the time of the sale that, under s.75 CCA, Santander 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, Santander was also responsible to answer.

Santander responded to say it was investigating, but by March 2020 it hadn't responded to PR, so Mrs M asked our service to look into a complaint.

After that, Santander said the claim under s.75 CCA had been raised too late and, as the total purchase price was over £30,000, s.75 CCA couldn't apply. It didn't deal with the allegation that there was an unfair debtor-creditor relationship.

One of our investigators considered the complaint, but didn't think Santander needed to do anything further. He thought that, due to the way Mrs M paid for membership, ss.75 and 140A CCA didn't apply to the problems Mrs M said there were. He pointed to the judgment in the case of *Steiner v. National Westminster Bank plc* [2022] EWHC 2519 (KB) ("Steiner"), which meant that as the payment went to FNTC and not the Supplier, Santander didn't need to pay anything to Mrs M.

PR asked for the matter to be reviewed by an ombudsman. It agreed that the judgment in Steiner applied in the way our investigator had said, but it argued that an ombudsman didn't have to follow the law if it doing so didn't reach a fair outcome.

What I've decided – and why

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

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[1] The membership application form says the price was £8,099, but the pricing summary prepared on the same day says the cost was actually £43,599, but an allowance of £35,500 was given for the trade in of other memberships held with the Supplier. If the actual cost was above £30,000, this would mean Mrs M wouldn't be able to make some of the claims that she has, but for the reasons set out in this decision, I've not needed to make a finding on the actual purchase cost.

[2] As the credit card used was in Mrs M's name, only she was able to make those claims and bring 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 Mrs M'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 Santander) to be liable to the borrower (here Mrs M) for the misrepresentations of the supplier (here the Supplier).

As our investigator noted, the judgment in Steiner considered the application of these provisions to determine whether there was a D-C-S agreement in place in the circumstances of that case. Steiner considered a claim where FNTC took payment on a credit card in relation to the purchase of timeshare membership from the Supplier. The court considered the arrangements between the parties and concluded that, as the payment to the 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 Mrs M's case are very similar. Here, the same businesses were involved and payment was taken 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 and, in turn, no valid s.75 CCA claim as the Supplier wasn't paid under an agreement involving Santander.

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 Mrs M 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.

It follows that I don't think the claims PR advanced on Mrs M's behalf would succeed for the reasons set out above and PR accepts that is the case. But 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. PR has argued that it would still be fair to uphold Mrs M's complaint, even when Santander might not be legally liable.

Having considered everything, I don't think it would be fair to make Santander responsible for the Supplier's alleged failures when the law doesn't impose such a liability. I say that I can't see that Santander and the Supplier were connected in any way nor is there any other reason to say Santander should be responsible for the Supplier's alleged failings, other than by the operation of the CCA.

It follows that I don't think Santander needs to do anything further to answer this complaint.

My final decision

I don't uphold Mrs M's complaint against Santander UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 December 2023.

Mark Hutchings
Ombudsman