

## The complaint

Mr C has complained that Lloyds Bank PLC unfairly turned down his claim made about something bought using his credit card.

## What happened

In 2011, Mr C, alongside another, purchased holiday club membership from a business I'll call "Business C". This cost £3,000 and was paid by Mr C using his Lloyds credit card.<sup>1</sup> But this credit card payment wasn't made directly to Business C, rather it went to a different business I'll call "Business F".<sup>2</sup>

In 2020, using a professional representative ("PR"), Mr C made a claim to Lloyds under s.75 of the Consumer Credit Act 1974 ("CCA"). In short, Mr C said Business C made misrepresentations at the time of the sale that, under s.75 CCA, Lloyds was jointly responsible to answer. He also said Business C breached its agreement it had with him.

Lloyds didn't respond and so PR chased it for an answer. In March 2021 Lloyds said it didn't receive the original claim, but that it would now investigate what Mr C had said. At that stage Lloyds said that Mr C could bring a complaint to our service if he wished. It also sent an email to PR asking for more information from Mr C, so it could consider the claim. But PR say it didn't receive this, so in 2022 it referred a complaint to our service that Lloyds hadn't properly considered the claim. Lloyds said the complaint fell outside of our jurisdiction as it was referred more than six months from its letter in March 2021.

One of our investigators considered the complaint, but didn't think Lloyds needed to do anything further. He looked at the response sent by Lloyds and saw it was incorrectly addressed, so he didn't think it was received by PR. So he thought the complaint was one we could consider. But he thought the claim had been made too late to Lloyds and it had a defence to it under the Limitation Act 1980.

PR said that Mr C didn't agree with the view and asked for the matter to be looked at again by an ombudsman. In doing so it also argued that problems with Business C membership led to an unfair debtor-creditor relationship under s.140A CCA.

I considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of Mr C's complaint and, as I disagreed with the reasons our investigator gave, I issued a provisional decision. I invited both parties to respond by 30 October 2023 with anything further they wished me to consider before I issued a final decision.

I explained that, when deciding complaints, I'm required by DISP 3.6.4 R of the FCA

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<sup>1</sup> Although the membership was taken out in the names of Mr C and another, as the card used was Mr C's, only he is eligible to make this complaint.

<sup>2</sup> Lloyds has provided a complete set of payments made using Mr C's credit card. Business F was paid £3,000 in December 2011. PR has also referred to £3,500 being paid on 12 June 2018, but no such payment appears in the records. I invited PR to provide further evidence of this payment in response to this provisional decision, but I've not received anything.

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 C’s behalf under s.75 CCA., so I 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...”*

I said that 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 C) for the misrepresentations or breaches of contract of the supplier (here Business C). But, on the face of it, there were no such arrangements in place at the relevant times as Business C wasn't paid directly using the credit card, rather the payments were taken by Business F.

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. I noted that the law in this area has 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.

The circumstances of Mr C's case are very similar. Here, the same business (Business F) took payment for Mr C's purchase of Business C 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.

In response to the investigator's view, PR sent submissions alleging that there might be an unfair debtor-creditor relationship between Mr C and Lloyds arising out of the purchases. This wasn't something ever put to Lloyds before, so it hadn't had the chance to consider it. However, I thought it was fair in the circumstances of Mr C's case to go on to look at that claim and I didn't think Lloyds was prejudiced by me doing so.<sup>3</sup> I said that as I can only consider how the agreements between Mr C and Business C affected the fairness of the debtor-creditor relationship if there was a valid D-C-S agreement in place. And, as already explained, I didn't think such an arrangement was in place, nor had Mr C 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 C's alleged failures when the law doesn't impose such a liability – I couldn't see that Lloyds and Business C were connected in any way nor was there any other reason to say Lloyds should be responsible for Business C's alleged failings.

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

Lloyds didn't respond to my provisional decision. PR responded on Mr C's behalf and asked for an extension of the time to respond to 6 November 2023. I agreed to that extension, but

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<sup>3</sup> I invited Lloyds to let me know if it disagreed with this approach and it didn't respond to that invitation.

PR provided nothing further by that date.

### **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.

DISP 3.5.13-15 sets out that I may fix and extend time limits for any aspect of the consideration of a complaint and, if a complainant fails to comply with the limit, I may proceed with the complaint or treat it as withdrawn. In this case, as PR didn't provide information by the extended deadline to which I agreed, I find it proper to issue this final decision based on the information I have available and I will not extend that deadline further.

Neither party provided me with anything further to consider, so I see no reason to depart from my provisional findings.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 December 2023.

Mark Hutchings  
**Ombudsman**