

The Complaint

Mr H says that Lloyds Bank PLC (the 'Business') didn't act fairly or reasonably under certain provisions of the Consumer Credit Act 1974 (the 'CCA') in relation to a timeshare he purchased on 29 January 2014 (the 'Time of Sale').

Background to the Complaint

Mr H (and his wife Mrs H) purchased a timeshare from a timeshare provider (the 'Supplier') at the Time of Sale. And he used a credit card provided by the Business (the 'Credit Agreement') to help pay for the purchase by making a payment (using his credit card) to a third party ('TP').

Mr H – using a professional representative ('PR') – wrote to the Business on 9 July 2019 to make a claim under Section 75 of the CCA for misrepresentations by the Supplier at the Time of Sale along with various regulatory breaches (the 'Letter of Claim').

On 9 August 2019, the Business wrote to PR to say that it refused to pay the claim on the basis that it wasn't covered by Section 75. PR disagreed and explained why in a letter to the Business on 2 September that year.

PR appears to have then written to the Business again in 2022. And on 5 October that year, it issued a final response rejecting a complaint about its handling of Mr H's Section 75 claim.

As a result, a complaint was referred to the Financial Ombudsman Service in January 2023. And it was said in the Complaint Form that, in addition to alleged misrepresentations by the Supplier at the Time of Sale, Mr H had been pressured at that time and that the Supplier marketed and sold the timeshare in question as an investment.

The complaint was then looked at by an investigator who didn't uphold it. In light of a relatively recent High Court case called *Steiner v National Westminster Bank plc* [2022] EWHC 2519 ('*Steiner*'), he wasn't persuaded that there was the right arrangement in place for the purposes of the CCA to hold the Business responsible for what had allegedly gone wrong.

PR disagreed with the investigator's view.

In summary, PR said that the Financial Ombudsman Service is free to depart from the law and suggested that a court might come to a different outcome to that reached in *Steiner* if the product involved was a timeshare like Mr H's and there was a closer inspection of the Supplier's relationship with TP.

As an informal resolution couldn't be reached, the complaint was referred for an ombudsman's decision – which is why it was passed to me.

My Findings

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

reasonable in the circumstances of this complaint.

And having done that, I don't think this complaint should be upheld.

The CCA introduced a regime of connected lender liability under Sections 56, 75 and 140A that afforded consumers ("debtors") a right of recourse against lenders ("creditors") that provide the finance for the acquisition of goods or services from a third-party merchant (the "supplier").

On my reading of this complaint, Mr H made a claim under Section 75 of the CCA for alleged pre-contractual misrepresentations by the Supplier and a complaint about a credit relationship with the Business that was allegedly unfair to him under Section 140A of the CCA. I acknowledge that the main body of the Letter of Claim doesn't expressly refer to Section 140A. But a number of the allegations made in that letter don't fall neatly (or at all) into a Section 75 claim. And if the Letter of Claim is construed too narrowly, it's difficult to explain why the relevant allegations were included in it. And as those allegations were repeated in the Complaint Form on referral to the Financial Ombudsman Service, given the nature of the relevant allegations, I think it was and is reasonable to consider this complaint with Section 140A in mind.

In order to engage the connected lender liability under Sections 75 and 140A (to the extent that allegations under Section 140A, in combination with Section 56(1)(c) of the CCA, relate to the acts and/or omissions of the Supplier rather than the Business), one of the pre-conditions is the existence of a relevant debtor-creditor-supplier agreement (a 'DCS Agreement').

Put simply, for a claim under Section 75 and/or a complaint (concerning the acts and/or omissions of a supplier) under Section 140A to get off the ground, there must be a DCS Agreement.

In 2022, the High Court handed down its judgment in *Steiner*. The facts of that case are very similar to this complaint.

In *Steiner*, a husband and wife had entered into an agreement with a timeshare provider to purchase from it the right to participate in a timeshare scheme for £14,000. The husband, Mr Steiner, had used his credit card account to pay the full amount. However, the payments weren't made to the timeshare provider. Instead, they were made to the same third party as TP in this complaint. The estate of the late Mr Steiner brought a claim against his credit card provider under Sections 56, 75 and 140A of the CCA. However, the claim was dismissed on the basis that the payment to the third party meant that there wasn't a DCS Agreement.

Given the obvious similarities between *Steiner* and this complaint, I think a court would reach the same conclusion and say there wasn't a DCS Agreement in this complaint and, consequently, dismiss any claim under Section 75 of the CCA. Likewise, insofar as a complaint about an unfair credit relationship between Mr H and the Business relates to the acts and/or omissions of the Supplier, a court can only consider whether the credit relationship between them under the Credit Agreement was unfair to him under Section 140A for those reasons if there was a DCS Agreement, which there wasn't on this occasion.

Overall, therefore, as I can't see any other reason why there was a DCS Agreement given the facts and circumstances of this complaint, I don't think it would be fair or reasonable to find that the Business bears responsibility for the Supplier's alleged failings when the law doesn't impose such a liability on the Business in the absence of a relevant connection between it and the Supplier. And as I see no other reason to ask the Business to

compensate Mr H in light of the complaints he's made, I don't think this complaint should succeed.

My Final Decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 April 2024.

Morgan Rees
Ombudsman