DRN-4542865

The complaint

Mr M has complained that National Westminster Bank Plc ("NatWest") unfairly turned down his claim made under s.75 of the Consumer Credit Act 1974 ("CCA").

What happened

In June 2014, Mr M, alongside another, purchased holiday club membership from a timeshare provider ("the Supplier"). This cost £5,000.18 and was paid by Mr M making two payments using his NatWest credit card. But the credit card payments were not made directly to the Supplier, rather they went to a different business, "FNTC".

In April 2020, using a professional representative ("PR"), Mr M made a claim to NatWest under s.75 CCA. In short, PR said the Supplier misrepresented matters at the time of the sale that, under s.75 CCA, NatWest was jointly responsible to answer.

NatWest did not respond to the claim and so PR referred a complaint to our service in 2022 that the claim had not been dealt with fairly. Although the holiday club membership was in the name of Mr M and another, as the credit card used was Mr M's alone, only he was able to make this complaint about NatWest.

NatWest responded to Mr M in February 2023 to say that any claim made under s.75 CCA that it was responsible for the Supplier's alleged misrepresentations had been made too late. And, in June 2023, it argued to our service that there were not the right sort of legal relationships in place for it to be liable to answer any claim under s,75 CCA.

One of our investigators considered everything, but did not think NatWest needed to do anything further. He thought that because Mr M's card payment had been made in favour of FNTC, and not the Supplier, the provisions of the CCA to which PR referred could not operate to impose a liability on NatWest.

PR responded to our investigator to say it disagreed with the outcome and asked for an ombudsman to review the complaint. However, it did not say why it disagreed.

What I have 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.

When deciding complaints, I am 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 M's behalf under s.75 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*".

The upshot of this is that for a claim under s.75 CCA, there needs to be a D-C-S agreement in place for the lender (here NatWest) to be liable to the borrower (here Mr M) for the misrepresentations of the supplier (here the Supplier). But, on the face of it, there were no such arrangements in place at the relevant times as the Supplier was not 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 is not 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 FNTC took payment on a credit card in relation to the purchase of timeshare membership from a timeshare provider.[1] The court considered the arrangements between the parties and concluded that, in that instance, there was no D-C-S agreement in place. That was because any payment made to that timeshare provider was made outside of the credit card network, and therefore not made under pre-existing arrangements, or in contemplation of future arrangements, between that timeshare provider and NatWest.

The circumstances of Mr M's case are very similar. Here, payment was taken in the same way by FNTC to fund a membership agreement between Mr M and the Supplier. 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 was not paid under an agreement involving NatWest. It follows, I do not think NatWest acted unfairly in turning down the claim made.

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 do not think it would be fair to make NatWest responsible for the Supplier's alleged failures when the law does not impose such a liability – I cannot see that NatWest and the Supplier were connected in any way. So I do not think NatWest needs to do anything further to settle this

[1] This was a different timeshare provider than the Supplier

complaint.

My final decision

I do not uphold Mr M's complaint against National Westminster Bank Plc.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 7 August 2024.

Mark Hutchings
Ombudsman