DRN-4584861

The complaint

Mrs S has complained that The Royal Bank of Scotland Plc ("RBS"), unfairly turned down her claim made under the Consumer Credit Act 1974 ("CCA") about something bought using her RBS credit card.

What happened

In January 2013, Mrs S, alongside another, purchased holiday club membership from a timeshare supplier ("the Supplier"). This cost £3,995 and was paid by Mrs S using her RBS credit card.[1] But this credit card payment wasn't made directly to the Supplier, rather it went to a different business, "FNTC".

In January 2017 Mrs S, using the help of a professional representative ("PR"), made a claim to RBS under s.75 CCA. In short, she said the Supplier misrepresented things at the time of the sale and later breached its contract with her that, under s.75 CCA, RBS was jointly responsible to answer.

In February 2017, RBS responded. It said that as FNTC was paid using the card and not the Supplier directly, it wasn't responsible to answer the claim made under s.75 CCA. After further correspondence, Mrs S referred a complaint to our service that RBS hadn't properly considered her claim.

One of our investigators considered Mrs S's complaint, but didn't make a finding on whether there were the right sort of arrangements in place for Mrs S to make a claim under the CCA. However, they went on to consider what Mrs S had said and didn't think there was enough to say there was a misrepresentation or breach of contract that RBS needed to answer. Mrs S disagreed and asked for an ombudsman to reconsider her complaint.

After our investigator gave their view, another investigator reconsidered Mrs S's complaint. They noted that a court judgment[2] meant that, as Mrs S's payment had gone to FNTC and not the Supplier, it meant there weren't the right arrangements in place after all and RBS didn't need to answer the claims made.

Mrs S responded to say that she understood that the payment made to FNTC was transferred to the Supplier under a trustee arrangement. So she asked for the matter to be considered again by an ombudsman.

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.

When doing so, I'm required by DISP 3.6.4 R of the FCA Handbook to take into account:

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[1] Mrs S bought membership alongside her husband, but as the card used was in her name alone, only she is able to make this complaint.

[2] *Steiner v. National Westminster Bank plc* [2022] EWHC 2519 (KB) ("Steiner")

"(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."

Mrs S made a claim 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 there needs to be a D-C-S agreement in place for the lender (here RBS) to be liable to the borrower (here Mrs S) for the misrepresentations of the supplier here the Supplier) under s.75 CCA. But, on the face of it, there were no such arrangements in place at the relevant times as the Supplier wasn't 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 isn't paid directly using a credit card. Our investigator pointed to the judgment in Steiner, in which it was 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 different timeshare supplier. The court considered the arrangements between the parties and concluded that, as the payment to that supplier was made outside of the credit card network and under the trust, in that instance there wasn't a D-C-S agreement in place.

The circumstances of Mrs S's case are very similar. Here, FNTC, acting as trustee, took payment on behalf of a timeshare supplier 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 as any payment made to the Supplier was outside of the card network and, in turn, no valid s.75 CCA claim.

I've also thought about whether the Supplier and FNTC could be associated under s.184 CCA. Under that provision, there might still be a D-C-S arrangement in place if FNTC was paid for the Supplier's services. But it would have to be shown that the same person (or group of people) effectively controlled both FNTC and the Supplier. And I can't see that was

the case. PR has provided evidence of potential links between FNTC and a business with a similar name to the Supplier, but not actually the business named on the timeshare agreement. So I don't think there is enough to say the Supplier and FNTC were associated.

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 don't think it would be fair to make RBS responsible for the Supplier's alleged failures when the law doesn't impose such a liability – I can't see that RBS and the Supplier were connected in any way nor is there any other reason to say RBS should be responsible for the Supplier's alleged failings.

It follows that I don't think RBS needs to answer the claim made.

My final decision

I don't uphold Mrs S's complaint about The Royal Bank of Scotland Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 26 February 2024.

Mark Hutchings
Ombudsman