



No second bite of the cherry, even in the absence of a signed agreement

By Harrison Denner

In a judgment that bolsters the growing wealth of County Court case law supportive of lenders, the Court in *Masterson v NewDay Ltd t/a Aqua (2020, unreported)*, held that (i) the Claimant's claim was compromised notwithstanding the absence of a signed agreement, and (ii) any unfairness that had previously existed had been remedied.

THE FACTS

1. The Claimant, who had entered into a PPI policy following her application for a credit card, sought relief under section 140B of the Consumer Credit Act 1974, alleging that the relationship between herself and the Defendant was unfair by reason of the Defendant's non-disclosure of commission received by it as part of the PPI policy.
2. However, in 2019, the Claimant had written to the Defendant pursuant to the FCA Dispute Resolution procedure, complaining that (i) the policy had been mis-sold to her, and (ii) the relationship between the parties was unfair. In response to this complaint, the Defendant had rejected the mis-selling complaint, but upheld the unfair relationship complaint and had offered the sum of £3,077.42 to the Claimant, using the FCA Step 2 redress calculation. A cheque was sent to the Claimant for that sum, which she duly banked.

THE JUDGMENT

3. In a judgment that will prove useful to lenders faced with claims for additional redress such as this, Deputy District Judge MacDonald, sitting in the County Court at Manchester dismissed the Claimant's claim in full, finding that: (i) the claim had already been compromised by reason of the Claimant's banking of the cheque ("the Compromise Agreement"), and (ii) in any event, the redress provided by the Defendant under Step 2 of the FCA DISP App scheme was appropriate and had remedied any unfairness in the parties' relationship. For both of those reasons, the Claimant was not entitled to the additional redress sought in this claim.
4. The Judge relied heavily on HHJ Belcher's decision in *Taylor v GE Money (2020, unreported)*, which she described as "very helpful". In doing so, the Judge rejected the Claimant's suggestion that the Defendant was obliged to make the Step 2 payment by reason of the FCA DISP App scheme and the related suggestion that there was therefore no consideration for the Compromise Agreement. The Judge was influenced by HHJ Belcher's dicta in *Taylor*: "If I ask the question was Miss Taylor entitled as of right to a sum under the FCA scheme, I am forced to the conclusion that she was not. She could not go to court to sue for that sum; something she would be able to do if she was entitled to that money as of right". The Judge also rejected the Claimant's argument (made for the first time in pre-action correspondence) that she had cashed the cheque as partial satisfaction of her claim, that suggestion having only been made after the cashing of the cheque and therefore post-dating the Compromise Agreement.
5. The Judge was quick to distinguish *Arrale v Costain [1976] 1 Lloyd's Rep 98* on the basis that, in that case, as distinct from the position under FCA the DISP App scheme, the defendant had been obliged to pay a specific sum by

way of redress and therefore there truly was no consideration for any agreement reached.

6. Additionally, the Judge found that even if she was wrong on that question of compromise, the redress payment made under the Compromise Agreement had remedied any unfairness that existed between the parties.

COMMENT

7. This importance of this case lies in three points:
 - a. First, it is part of a growing body of County Court decisions supportive of the argument that claims such as these have been compromised. In that regard, it should be read alongside *Finlayson v The Royal Bank of Scotland Group plc* (2020, unreported), *Clegg v The Royal Bank of Scotland Group plc* (2020, unreported), *Best v Newday Ltd* (2020, unreported) and *Cusworth v Newday Ltd (T/A Marbles)* (2019, unreported) and can be deployed at trial along with those cases as examples of the approach increasingly being taken at County Court level.
 - b. Second, it is an extension of previous case law on the issue (including Taylor) in that this case did not include the signing of a formal contract that expressly included reference to an agreement to waive any future claims that the Claimant may have, as is more typical in these cases and as was the case in the hugely helpful Taylor case. In that sense, the Court appears to have shown willingness to infer the waiving of any future claim from the nature of the complaint made and the nature of the FCA DISP App scheme itself; and
 - c. The Judge's secondary finding is helpful in the event that there are any deficiencies in the lender's argument on compromise. It makes clear that FCA Step 2 redress can be seen as an appropriate sum rectifying unfairness and may be relied on as a free-standing defence by lenders.

8. Harrison Denner was instructed by Andrew Horton at DLA Piper on behalf of the successful lender.

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