

## The complaint

Mrs J complains that Bank of Scotland plc trading as Halifax won't accept liability for her claim under connected lender liability provisions of the Consumer Credit Act 1974 ("CCA").

## What happened

With the help of a professional representative "F", Mrs J sought to hold Halifax liable to compensate her for a claim relating to holiday club membership she and her husband bought from a timeshare provider "D". Mrs J made the purchase with her Halifax credit card.

Mrs J subsequently claimed that the sale included aspects of misrepresentation and/or other acts or omissions that suggested grounds for a claim against D. She felt that relevant provisions of the CCA<sup>1</sup> meant the bank carried a liability to her. Halifax didn't agree with Mrs J's claim, and she referred the matter to us.

Our investigator wasn't satisfied that the arrangements Mrs J entered into met the necessary requirements to engage the CCA provisions. While Mrs J had used her credit card to make payment, that payment was made to a trustee "A", rather than to D. In reaching her conclusion the investigator noted the High Court decision in *Steiner*<sup>2</sup>, which she felt was relevant law. The investigator concluded that the CCA provisions referenced in Mrs J's complaint could not operate to impose a liability on Halifax, and so she couldn't ask the bank to compensate Mrs J.

F responded on Mrs J's behalf. It expressed the view that the fair and reasonable remit of the ombudsman service gave discretion – which should be exercised in this case – to depart from the position in law. F sought to draw a distinction between the decision in *Steiner* and Mrs J's claim and asserted that the role of A should be viewed as akin to that of a payment processor, which would preserve the necessary CCA provisions. It has sought a review of Mrs J's complaint, which has been passed to me for review and determination.

## 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.

The rules that govern our service<sup>3</sup> set out, at DISP 3.6.4R, that *"in considering what's fair and reasonable the ombudsman will take into account:*

- (1) *relevant:*
  - (a) *law and regulations;*
  - (b) *regulators' rules, guidance and standards;*
  - (c) *codes of practice; and*

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<sup>1</sup> Relevant provisions here include sections 56, 75 and 140A of the CCA.

<sup>2</sup> *Steiner v. Halifax Bank plc* [2022] EWHC 2519 (KB)

<sup>3</sup> Our rules can be found in the DISP section of the Financial Conduct Authority ("FCA") Handbook.

*(2) (where appropriate) what the ombudsman considers to have been good industry practice at the relevant time.”*

As an ombudsman, I'm not bound by precedent and am able to depart from the legal position where I consider it appropriate; for example, where I'm satisfied there's good reason to think that following the legal position would result in an outcome that is neither fair nor reasonable. But I am required to take relevant law into account; I can't simply disregard it.

I'm satisfied in this case that the judgment in *Steiner* is relevant law. And for the avoidance of any doubt, I'm satisfied that the arrangements in Mrs J's transaction are as described by our investigator. A acted in the transaction as a trustee and not as a payment processor. And the involvement of A as trustee means the connected lender liability arguments F advanced in Mrs J's claim are not engaged.

F asks that I exercise my discretion to depart from the *Steiner* conclusions for the purposes of dealing with Mrs J's complaint. I've read F's submissions. They offer no clear reason why the interests of fairness can only be met in this way, and I'm not persuaded they offer a compelling case for departing from the accepted legal position. The scenario in Mrs J's case is not materially different from that in *Steiner*, which clarified that the provisions of the CCA didn't extend to covering a scenario like the arrangements that operated in Mrs J's transaction. And the issues addressed in *Steiner* speak directly to one of the key issues in Mrs J's claim; that is, whether Halifax has liability to Mrs J under the CCA provisions.

The High Court has clarified the legal position and that is to be treated as being the correct interpretation. I'm not persuaded that it would be appropriate for me to depart from the recognised legal position in these circumstances, or that I can otherwise properly reach a finding that Halifax should compensate Mrs J for not meeting a legal liability that relevant law says it doesn't have.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 7 July 2025.

Niall Taylor  
**Ombudsman**