

The complaint

Mr H is unhappy that National Westminster Bank Public Limited Company won't accept liability for a claim he made under connected lender liability provisions of the Consumer Credit Act 1974 ("CCA").

What happened

With the help of a professional representative "S", Mr H sought to hold National Westminster liable to compensate him for a claim relating to a purchase of holiday club membership he and his wife made from a timeshare provider "D". He used his National Westminster credit card to fund the purchase, which included an exchange of their existing membership.

Mr H said that the sale included aspects of misrepresentation and/or other acts or omissions that suggested the creation of an unfair credit relationship between him and National Westminster. He considered that relevant provisions of the CCA¹ meant the bank carried a liability to him. National Westminster didn't agree with Mr H's claim, and he referred the matter to us.

Our investigator wasn't satisfied that the arrangements Mr H entered into met the necessary requirements to engage the CCA provisions. While Mr H had used his credit card to make payment, that payment was made to a trustee "F", rather than to D. In reaching his conclusion the investigator noted the High Court decision in *Steiner*², which he felt was relevant law. The investigator concluded that the CCA provisions referenced in Mr H's complaint could not operate to impose a liability on National Westminster, and so he couldn't ask the bank to compensate Mr H.

S responded on Mr H's behalf. It acknowledged the decision in *Steiner*, its relevance to Mr H's claim and accepted that the conclusion reached was manifestly correct. However, it has sought a review of Mr H's complaint, making the following points:

- the law relating to the arrangements between the parties necessary for connected lender liability to be engaged has changed following the decision in 2022 in *Steiner*. While the conclusion is manifestly correct, the ombudsman has the remit to depart from settled law as he sees fit, adhering only to the principle of fairness.
- Had our service resolved matters timeously, Mr H's claim would have succeeded. It was settled law that the payment to F would not have been a barrier to a successful claim. The conclusion reached is unfair and was not reached in a reasonable period of time, which has caused Mr H loss.

S also included a number of points that appear to be pre-emptive responses to what it considered our service might say about its concerns over the time taken to deal with Mr H's complaint. These include that we have acted in bad faith and in a way that is incompatible with Mr H's human rights.

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

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

Mr H's complaint 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 service³ 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*

(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 is good reason to think that following the legal position would result in an outcome that is neither fair nor reasonable. But as noted above, I am required to take relevant law into account; I can't simply disregard it.

It's accepted in this case that the judgment in *Steiner* is relevant law. S, on behalf of Mr H, hasn't disputed its application to the circumstances of his transaction. For the avoidance of any doubt, I'm satisfied that the arrangements in Mr H's transaction are as described by our investigator, and that the involvement of F as trustee means the connected lender liability arguments S advanced in Mr H's claim are not engaged.

Rather, S asks that I depart from the conclusions in *Steiner* for the purposes of dealing with Mr H's complaint. Its reasons for this can be summarised thus:

The law, both at the time Mr H transacted and when he brought his complaint to us, was settled. The judgment in *Steiner* was handed down later and that changed the law in a way that means that Mr H's claim cannot now succeed. Had Mr H's complaint been dealt with prior to *Steiner*, it would have been successful, or at least, it would not have foundered on the matter of F's involvement. The time taken has resulted in an outcome that is unfair.

I'm not persuaded that's a compelling case for departing from the acknowledged legal position. *Steiner* did not *change* the law; it simply *clarified* the law – in this case, that the provisions of the CCA didn't extend to covering a scenario like the arrangements that operated in Mr H's transaction. And the issues addressed in *Steiner* speak directly to one of the key issues in Mr H's claim; that is, whether National Westminster has liability to Mr H under the CCA provisions.

Whether Mr H's claim would have been successful prior to *Steiner* is not material to that question of liability. 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 National Westminster should compensate Mr H for not meeting a legal liability that relevant law says it does not (and indeed, never did) have.

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

I've noted S's comments in respect of the time we have taken to consider and determine Mr H's complaint. Aside from the reasoning I've already set out, I make no further comment in this decision about the points S has made in this respect. None of them speaks to the merits of Mr H's complaint about National Westminster and they have no bearing on whether the bank should compensate him.

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 Mr H to accept or reject my decision before 18 April 2025.

Niall Taylor
Ombudsman