

## The complaint

Mr B has complained that Bank of Scotland trading as Halifax (“Halifax”) didn’t fairly or reasonably deal with claims under the Consumer Credit Act 1974 (“CCA”) in relation to a holiday product bought using his credit card.

This decision relates solely to a complaint about Halifax’s response to claims under the CCA in relation to a holiday product Mr B purchased in July 2016. A separate complaint about two timeshare relinquishment products which Mr B purchased in July 2018 and July 2019 using his Halifax credit card has been considered by our service under a separate complaint reference and, therefore, these do not fall within the scope of this decision.

## What happened

In July 2016, Mr B purchased holiday club membership from a timeshare provider (the Supplier<sup>1</sup>). It was paid for by Mr B – in part – using his Halifax credit card<sup>1</sup>.

The purchase agreement entered into by Mr B was made between him and the Supplier. However, the credit card payment wasn’t made directly to the Supplier, rather it went to a different business I’ll call “Business F”.

In January 2021, using a professional representative (“PR”), Mr B made a claim to Halifax under section 75 of the CCA. The reasons for the claim are familiar to both sides so I don’t intend to repeat them in detail here. But, in summary, Mr B said the Supplier made misrepresentations at the time of sale and that, under section 75 CCA, Halifax was jointly responsible to answer for them.

Halifax responded to the claim by saying it had not received sufficient evidence to suggest there had been a breach of contract or misrepresentation of the kind alleged.

Unhappy with this, the complaint was referred to our service.

One of our investigators looked into matters and issued their findings in November 2023. In short, our investigator said there wasn’t the right arrangement in place to make such a claim because Mr B hadn’t used his credit card to pay the Supplier directly.

PR disagreed with our investigator’s findings. And, in doing so, sought to expand the scope of this complaint by making a new complaint about Halifax participating in a credit relationship that was unfair to Mr B under Section 140A because the timeshare in question was a Collective Investment Scheme.

Generally speaking, a respondent firm (like Halifax) ought to be given the chance to consider a new complaint before the Financial Ombudsman Service does. However, given the age of this complaint, it seems to me to be in everyone’s interest to draw a line under it and consider it with all of the allegations in mind.

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<sup>1</sup> Although the membership was in the names of Mr and Mrs B, it appears the credit card used was in Mr B’s name and, with that being the case, only he can make this complaint.

I issued my provisional findings to both parties on 26 June 2024. I said I wasn't minded to uphold the complaint for the following reasons:

*...a claim under Section 75 and/or a complaint (of the kind in question) under Section 140A to get off the ground, there must be a Debtor-Creditor-Supplier (D-C-S) Agreement.*

*But, on the face of it, there was no such arrangement in place at the relevant time.*

*The law in this area was clarified by the High Court in Steiner v. National Westminster Bank plc [2022] EWHC 2519 (KB) ("Steiner").*

*The late Mr Steiner ("the Estate") paid for a timeshare provided by Club La Costa Vacation Club Ltd ("CLC") using his NatWest credit card. So, for the purposes of s.11(1)(b) of the CCA, NatWest was the creditor, the late Mr Steiner was the debtor and CLC was the supplier. But the payment was in fact taken by FNTC.*

*The Estate initially argued that the right arrangements were in place because there was a Deed of Trust between CLC and FNTC under which CLC would receive payment. But the High Court was not persuaded by this. On appeal, the Estate's claim sought to demonstrate that the credit agreement was made "under pre-existing arrangements", or in contemplation of "future arrangements" and extended to CLC under section 12(b) CCA.*

*But the High Court dismissed the appeal. And in doing so, the Court held that arrangements could not be "stretched so far as to mean that NatWest made its agreement with the late Mr Steiner under the Deed of Trust (of which it was presumably unaware) as well as under the Mastercard network." Therefore, the existence of the Trust Deed didn't help to create a valid D-C-S agreement for the purposes of the CCA.*

*The circumstances of Mr B's case are very similar to the circumstances in Steiner. In this case, Business F took payment for Mr B's purchase of the timeshare. 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 section 75 CCA claim. Likewise, as Mr B hasn't alleged that there was an unfair credit relationship for reasons that relate directly to the acts and/or omissions of Halifax, a court could only consider whether the credit relationship between him and Halifax under the Credit Agreement was unfair to him under Section 140A if there was a DCS Agreement, which there wasn't on this occasion.*

*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 or reasonable to find that Halifax bears responsibility for the Supplier's failings when the law doesn't impose such a liability on Halifax in the absence of a relevant connection between it and the Supplier.*

I invited further comments and evidence from both parties. In response to my provisional findings, Halifax said it had nothing further to add. And PR said that it had no further evidence to submit but it said that it would contact Mr B to establish if he would like to add anything. No further submissions were forthcoming.

### **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.

Given that neither party had anything further to add in response to my provisional findings, I see no reason to depart from the conclusions set out above.

It follows that I do not uphold this complaint.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 August 2024.

Ross Phillips  
**Ombudsman**