DRN-5463811

The complaint

Mr M complains that Bank of Scotland plc trading as Halifax ('Halifax') acted unfairly and unreasonably in respect of a complaint he raised about how parts of the Consumer Credit Act 1974 ('CCA') related to something he bought using his Halifax credit card.

What happened

Mr M, together with another, purchased membership of a timeshare product from a timeshare provider (the 'Supplier') on 13 April 2011 (the 'Time of Sale'). They entered into an agreement with the Supplier to buy membership with 23,500 timeshare points at a total cost of £6,162 (the 'Purchase Agreement') including fees and membership dues.

Mr M paid a deposit of £800 towards the timeshare product he purchased using his Halifax credit card[1]. But this credit card payment wasn't made directly to the Supplier. Rather, it went to a different business - who I'll refer to as 'FNTC'.

In December 2023, using a professional representative (the 'PR'), Mr M made a claim to Halifax under section 75 of the CCA ('s.75') In short, the PR said the Supplier made misrepresentations at the Time of Sale that, under s.75, Halifax was jointly responsible to answer.

Halifax responded to the claim in June 2024 and said:

- Mr M's claim under s.75 for misrepresentation by the Supplier had been made too late under the provisions within the Limitation Act 1980 (the 'LA'); and
- it wasn't responsible to answer the claim made as Mr M hadn't paid the Supplier directly. Rather, the payment had gone to a third party – FNTC. Halifax said this meant s.75 didn't apply in the way the PR argued it could.

Mr M didn't agree with the claim outcome given by Halifax. So, the PR (on his behalf) responded to Halifax in October 2024. It explained, at length, why it thought the time limits under the LA should not be applied in Mr M's case. In particular suggesting that any limitation should be postponed pursuant to section 32 of the CCA ('s.32') as there were aspects of the alleged misrepresentations that had been deliberately concealed from Mr M by the Supplier that he couldn't reasonably have discovered until much later.

Halifax provided its final response to Mr M's complaint in writing in November 2024, rejecting it on every ground.

In December 2024, the PR referred Mr M's complaint to the Financial Ombudsman Service. An investigator considered the complaint but didn't think Halifax needed to do anything further. In particular, the investigator didn't think Halifax was likely to have to do anything under the relevant provisions of the CCA as the payment made using Mr M's credit card didn't go to the Supplier directly. Rather, it went to FNTC which meant, following the judgment in 'Steiner'[2], there wasn't the required arrangement in place for Halifax to have to consider allegations about the Supplier's misconduct.

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[1] Although Mr M brought this alongside someone else, as the credit card used was in his sole name, only he is able to make this complaint.

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

The PR disagreed with the investigator and wanted an ombudsman to review Mr M's complaint. It suggested the investigator had adopted *"an unduly narrow interpretation of the law"*. The PR argued, *"Even if the Supplier was not paid directly through the credit card network, the Business's involvement in processing or authorising the transaction established its role in the transaction.*

The PR also referred to a previous decision I had issued in which I found there had been a breach of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010 (the 'Timeshare Regulations'). It also suggested that *"The Business has not disputed that there was a pre-existing arrangement between it and the Supplier, demonstrating that the negotiations conducted by the Supplier during the sale of* [Mr M's] *membership were, in fact, conducted in relation to a transaction financed or proposed to be financed by a debtor-creditor-supplier agreements as defined in Section 12(b) of the CCA".*

Finally, the PR asked this service to consider the case of *Scotland v Alfred Truman (a firm) EWHC 583* ('Scotland vs Truman'). It said, *"Although the Business may not have had a direct relationship with FNTC, the Business's arrangements with FNTC created an indirect relationship between the Business and the Supplier. This indirect relationship is sufficient to constitute a pre-existing arrangement within the meaning of Section 13(b) of the CCA".*

As the parties didn't agree with the investigator's findings, Mr M's complaint has been passed to me for a decision.

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.

In doing so, I'm required by DISP 3.6.4 R of the FCA Handbook to 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."*

The PR made a complaint on Mr M's behalf, pointing to the operation of s.75. I think it's helpful to set out the relevant legal provisions.

s.75(1) 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) states that a debtor-creditor-supplier ('DCS') 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 DCS agreement in place for the lender (here that's Halifax) to be liable to the borrower (here that's Mr M) for the misrepresentations of the Supplier under s.75. But, on the face of it, there was no such arrangement in place at the relevant time as the Supplier wasn't paid directly using Mr M's credit card. Rather, the payment was taken by FNTC.

There are ways in which there can be a DCS agreement in place, even if the Supplier isn't paid directly using a credit card. The investigator pointed to the judgment in Steiner, where it was considered whether there was a DCS agreement in circumstances where FNTC took payment on a credit card in relation to the purchase of a timeshare membership from another 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, in that instance there wasn't a DCS agreement in place.

The circumstances of Mr M's case are very similar. So, based on the judgment in Steiner, I think a court would come to a similar conclusion and say that there was no DCS agreement in place as any payment made to the Supplier was outside the card network and, in turn, no valid s.75 claim. I'll explain further.

In Steiner, payment was taken for timeshare membership. But rather than the claimant's credit card being used to pay the timeshare supplier directly, payment was actually taken by a trustee (in that case it was also FNTC). There was a deed of trust between FNTC and that timeshare supplier, such that the timeshare supplier was a beneficiary under the trust. The Court considered the meaning of the words in s.12 CCA *"pre-existing arrangements, or in contemplation of future arrangements"* and concluded that the central issue was whether the credit agreement (i.e. the credit card) was granted by the lender under pre-existing arrangements or in contemplation of future arrangements between it and the supplier, rather than the nature of the arrangements at the time of the purchase. The Court concluded that it was not likely that the lender issued the credit card in contemplation of arrangements outside of, and in addition to, the credit card network, i.e. the trust deed between FNTC and the timeshare supplier as well as the card network involving FNTC.

In Mr M's case, I also find it unlikely that Halifax granted Mr M a credit card in the knowledge of the trust deed between the Supplier and FNTC, nor in contemplation of the existence of any such trust deed. That is the important issue with this case and not the precise arrangement by which FNTC passed funds (if it did) to the Supplier when the card was used. It follows, I don't think there was a DCS arrangement in place involving Halifax and the Supplier here.

I have also considered whether the Supplier and FNTC were 'associates' as defined by the CCA. But any common obligations and relationships between the various parties seem to arise only under the trust deed rather than the entire operations of each business being controlled by the same people. So, I can't see that the Supplier and FNTC were 'associates' under the CCA. And it follows that I don't think s.75 applies to the complaint submitted by the PR on Mr M's behalf in the way required to make Halifax responsible for the Supplier's alleged actions.

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 Halifax responsible for the Supplier's alleged failures when the law doesn't impose such a liability. Further, I can't see that Halifax and the Supplier were connected in any way, nor is there any other reason to suggest Halifax should be responsible for, or connected to, the Supplier's alleged failings.

In response to the investigator's findings, the PR said, *"The Business has not disputed that there was a pre-existing arrangement between it and the Supplier…"*. However, I don't agree. In rejecting Mr M's claim and subsequently not upholding his resultant complaint, I

think Halifax was quite clear in its belief that there was no DCS agreement or pre-existing arrangement.

The PR has referred to another decision I issued in relation to a Timeshare purchase where I found that the Supplier had breached part of the Timeshare Regulations when selling the timeshare in that particular case. However, the individual circumstances in that case were very different to those in Mr M's case. And importantly, that particular transaction didn't involve a payment made with a credit card, such that a DCS agreement was established in that case.

The PR also asked that I consider the court's findings in the case of Scotland vs Truman. The case concerned a firm of solicitors who had a motor trader as a client. The solicitors took credit card payments from customers of the motor trader (which had no facility to take such payments itself) as deposits for cars which the customer had ordered. The court found that the contractual arrangements between the motor trader and the solicitors were *"adequate"* to link the motor trader to the card scheme through the transactions processed via the solicitors' credit card facilities, and therefore it meant there was a DCS agreement in place.

However, the court also said that its conclusion couldn't be applied in all cases as a general principle, and there were problems with establishing where the line should be drawn between scenarios where the supplier could be linked to the card scheme, and where things were *"too tenuous"* to be able to draw that conclusion. The court noted that the problem would need to be resolved on a case by case basis, and that the *"precise contractual arrangements"* between the parties would determine whether the creditor had liability under s.75.

This is exactly what the court did in Steiner. And I've found no reason to suggest that those findings shouldn't also apply in Mr M's case. It follows that I don't think Halifax needs to do anything further to answer Mr M's complaint.

My final decision

For the reasons set out above, I don't uphold Mr M's complaint about Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 May 2025.

Dave Morgan
Ombudsman