DRN-5755280

The complaint

Mr F complains Bank of Scotland plc (trading as Halifax) failed to help him get all his money back for legal work he says he paid for but didn't receive.

What happened

I issued my provisional decision on 11 August 2025. An extract from that decision can be found below.

Mr F used an online platform (which I'll call "P") to find a barrister to help him draft an appeal. P specialises in connecting its customers directly with suitable barristers, who then provide legal services directly via a separate contract.

In April 2023, the barrister Mr F chose offered to undertake legal work that included preparing an appeal bundle and drafting an appeal, for a £1,944 fixed fee. The quote was based on the work taking an estimated six hours.

Mr F agreed to the quote, and in April 2023 he paid £1,944 to P with his Halifax credit card.

The barrister reviewed Mr F's documents and concluded there weren't any valid grounds for an appeal, so he didn't draft one. But as Mr F still wanted to proceed with the appeal, he drafted his own document.

Mr F said that because the barrister hadn't drafted the appeal, he didn't receive the service he paid for. His barrister contends that he reviewed many documents, prepared an appeal bundle, continued to engage Mr F to help him lodge the appeal, and spent more than the six hours on the case initially estimated. He said he did what was asked and the £1,944 fee was justified. As Mr F couldn't resolve his dispute with his barrister, he asked Halifax for help.

On around 18 August 2023, Halifax raised a chargeback on Mr F's behalf for the £1,944 he paid based on services not being received. P argued the services were received. Despite the claim proceeding to pre-arbitration, the chargeback wasn't successful.

Halifax considered Mr F's claim under section 75 Consumer Credit Act 1974 ("section 75"). But it concluded the required "debtor-creditor-supplier" agreement for making a valid claim wasn't in place because Mr F had paid P, rather than his barrister, for the legal services.

Mr F asked the Financial Ombudsman Service to look into matters further, but our investigator didn't think Halifax did anything wrong. In particular, she didn't think the chargeback had reasonable prospects of success, nor did she think Mr F had grounds for making a valid section 75 claim. So his complaint has come to me for a decision.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what I feel is fair and reasonable in the circumstances of this complaint. This includes the relevant laws, regulations, guidance and standards, codes of practice and good industry practice. And

where it's unclear what's happened, my conclusions are based on what I think is most likely to have happened given the information available.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality. I'd like to assure both parties I've considered everything they've sent, including the submissions sent to me after the investigator's assessment.

It's important to note that Halifax didn't provide the legal services. So to decide if it acted fairly, I need to consider its role as a financial services provider only. As Mr F used his credit card to pay P, I need to consider how Halifax could have reasonably assisted him through the protections offered by the chargeback process and section 75.

Chargeback

When someone buys something with their credit card, and something goes wrong, the card issuer can sometimes help them obtain a refund by raising a chargeback on their behalf. There's no obligation for a card issuer to raise a chargeback for a customer — but I'd expect it to do so if a chargeback has reasonable prospects of succeeding. Likewise, if at some point during the process a chargeback is unlikely to succeed, it's generally not unfair for a card issuer to discontinue the chargeback.

The rules governing the chargeback process are set by the relevant card scheme – in this case, that would be Mastercard. These rules set out strict conditions that must be satisfied for a chargeback claim to be successful. I'd expect a card issuer like Halifax to apply the scheme rules correctly and conduct the chargeback process fairly.

As Mr F said he didn't receive the service he paid for, Halifax raised the chargeback under Mastercard's reason code "Goods or Services Not Provided". I think that was reasonable as it aligned with Mr F's claim. For a claim to succeed under this reason code, Halifax would generally need to evidence Mr F didn't receive the service he paid for.

After considering all the evidence from both sides, I don't think Mr F's claim was likely to succeed. P found him a barrister, Mr F engaged that barrister's services for an agreed fee, and the barrister provided a service. Under Mastercard's relevant chargeback rules, I don't think it can be reasonably argued that Mr F didn't receive any services, despite Mr F's obvious unhappiness with the comprehensiveness and quality of the service.

Halifax offered Mr F fair opportunity to submit further evidence and progressed the claim to Mastercard's pre-arbitration stage. I think it did everything it reasonably could in the circumstances. So I don't find it acted unfairly when it finally decided to discontinue a claim that was unlikely to succeed — particularly given the limitations of the chargeback scheme.

That said, it doesn't automatically follow that an unsuccessful chargeback means Mr F doesn't have a valid claim for breach of contract. I understand a core part of Mr F's claim is that his barrister breached his contractual obligation to perform services with reasonable care and skill, as outlined in section 49 of the Consumer Rights Act 2015 (CRA). But whether there was a "breach of contract" is not a relevant consideration under Mastercard's chargeback scheme, which has its own set of rules that don't incorporate the CRA.

In these circumstances, I find it was reasonable that Halifax proceeded to consider whether Mr F's claim could succeed under section 75 instead — which in some circumstances could make a credit provider responsible for a supplier's breach of contract.

Section 75 Consumer Credit Act 1974

If a consumer buys goods or services on credit, section 75 can sometimes make the credit provider equally responsible for a breach of contract or misrepresentation by the supplier. Certain technical criteria must be met for section 75 to apply. These are set out in law, and one is for there to be a valid "debtor-creditor-supplier" (or "DCS") agreement.

Here, the debtor is the person paying for the goods or services (Mr F), the creditor is the party providing credit (Halifax), and the supplier is the party providing goods or services. In Mr F's case, there are two suppliers (P and the barrister) providing different services.

Mr F isn't complaining about P's platform services, which include finding and compiling a list of barristers for Mr F to select from. His core complaint is about the services his barrister provided under a separate contract. And it's clear from both P's and the barrister's terms and conditions that Mr F and his barrister are the only parties to this separate contract for legal services. For example, the barrister's terms say:

"1. I am a self-employed barrister, I am the only person you are instructing, and I will personally do all the work needed under this arrangement. In the event that I wish to use any other lawyer to assist me in carrying out your work I will obtain your prior written consent."

Despite Mr F contracting directly with the barrister for legal services, Mr F's statement transactions show payment for those services went to P instead of directly to his barrister. In the circumstances, I'm not satisfied the relevant DCS agreement exists, I don't think section 75 applies, and Mr F cannot hold Halifax liable for a breach of contract or misrepresentation by his barrister. As the existence of a DCS agreement remains the key point of dispute, I'll expand on this further for clarity.

<u>DCS agreement</u>

The relevant legislation is covered by section 12 of the Consumer Credit Act 1974 (CCA), which sets out what kind of agreements are "DCS" agreements. And the relevant part comes under section 12(b), which provides as follows:

"A debtor-creditor-supplier agreement is a regulated consumer credit agreement being:

…(b) 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 section 11(1)(b) restricted-use credit agreement if it's 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 there must be a DCS agreement to hold Halifax liable under section 75 for a breach of the barrister's contract to supply legal services. And for such an agreement to exist in Mr F's circumstances, the credit agreement had to have been made under "pre-existing arrangements" or in "contemplation of future arrangements" between Halifax and the barrister (the relevant supplier).

The CCA provides limited assistance for what constitutes "arrangements" under section 12(b) CCA. So it has fallen to case law to set out the scope of this provision.

Mr F seeks to rely on Bank of Scotland v Alfred Truman [2005] EWHC 583 (QB) (which I'll call "Truman") as authority for the proposition that an arrangement can exist even if the relationship between a credit provider and supplier is indirect. He argues that because his

case is so similar, I should make a finding that the necessary arrangements exist for establishing a DCS agreement in his case based on the same reasoning set out in Truman.

In Truman, consumers ordered cars from a supplier (Topkarz) that went insolvent – those cars were never delivered. The consumers had made credit card payments towards the cars, but those payments went to a firm of solicitors that took those payments on behalf of Topkarz. A key consideration was whether the necessary "arrangements" under section 12(b) CCA existed between the credit card issuers and Topkarz for section 75 to apply.

Judge Iain Hughes QC found there existed a simple contract between the consumers and Topkarz for the sale of the cars, and there was no second contract between the consumers and the solicitors. The consumers had no direct dealings with the solicitors during the sale. They had passed their credit card details to Topkarz — which then passed those details to their solicitors to process the payments. In these circumstances, the judge found the solicitors were acting as agent of Topkarz while processing those payments — that agency relationship being sufficient to find that Topkarz, via its agent solicitors, had a section 12(b) CCA "arrangement" with the credit card issuers.

A key ingredient of the finding of that agency relationship was the absence of any direct dealings or contractual relationship between the cardholders and the solicitors. In these specific circumstances, Judge Iaian Hughes QC found Topkarz was linked "by a spur" to the card scheme the card issuers and the solicitors were part of, creating the DCS agreement necessary for section 75 to apply.

Mr F said that to demonstrate there exists a DCS agreement in his situation, he'd need to successfully argue that P was acting as a mere payment facilitator or agent. Or in other words, to show his circumstances are similar enough to Truman such that I ought to find a DCS agreement exists based on the precedent set by Truman.

In support, Mr F said P was acting "solely as a payment facilitator or agent…" given the paperwork clearly identifies the barrister as the supplier — something that Halifax ought to have known too — and on that basis the DCS agreement is preserved.

Even if I accept Mr F's premise at face value that establishing P as a "mere payment facilitator" or "agent" is the test for establishing the necessary DCS agreement, I don't find Mr F's case satisfies that test on the facts. I also don't think it's similar to Truman.

The sales documents, P's terms, and the barrister's terms, make it clear to me that P is not a "mere payment facilitator" and its role goes beyond simply ensuring the credit card payment is forwarded to the barrister. P markets itself as a platform that helps find suitable barristers and facilitates direct access to them, with its own set of terms and conditions that govern the services it provides to its customers. Moreover, it's clear there's an administrative cost to this service (£270 + VAT in portal and admin fees) that Mr F pays to P upon acceptance of the legal services. Given that 100% of the legal fees charged (£1,350 + VAT) also go to the barrister, that suggests P earns no commission from the barrister, as one might expect if P was purely acting as agent.

P's role in Mr F's situation is distinctly different from the solicitors' role in Truman. Unlike P, the solicitors in Truman didn't have any direct dealings with the consumers, didn't have a separate contract with them, and didn't provide (or charge) them for a separate service. I think that distinction alone is enough to say that any precedent Truman might have set doesn't apply to Mr F's circumstances. I say that while bearing in mind the judge in Truman was reluctant to create a general principle for determining the existence of "arrangements" in complex DCS scenarios. At [97] to [98] of the judgement, he said:

"However, I recognise that there are a number of problems with my conclusion. Where is the line to be drawn? At what point does the nexus evaporate and a relationship become too tenuous even for "broad, loose" language of this part of the 1974 Act?

In my view this is a problem that will have to be resolved on a case-by-case basis and is not really susceptible to solution by the application of a statement of general principle…"

After considering everything, I'm not persuaded Mr F's case is similar enough to Truman, such that I should find there exists a DCS agreement on the same basis as Truman.

Even if I were wrong on that, I don't think Truman provides much assistance for determining what would currently be considered an "arrangement" under section 12(b) CCA. I say that because the law has significantly evolved since the 2005 Truman judgment, with the most recent case law limiting the types of situations that might result in an "arrangement".

Like our investigator, I consider the most helpful and relevant authority on what constitutes "arrangements" under section 12(b) CCA can be found in the recent High Court case of Steiner v National Westminster Bank plc [2022] EWHC 2519 (KB) (which I will call "Steiner").

Mr Steiner had used his credit card to purchase a timeshare from a timeshare provider. But the payment went to a third-party trust company, who had a separate agreement with the timeshare provider. A key issue was whether the necessary "arrangements" between the creditor and the timeshare provider existed under section 12(b) CCA, despite the payment going to the trust company instead of directly to the provider.

In a previous case — Office of Fair Trading v Lloyds TSB Bank plc [2007] QB 1 ("OFT v Lloyds TSB") — the Court of Appeal held the necessary arrangements existed between a creditor and supplier who were members of the same credit card network, despite there being no direct contractual arrangement between them. But in Steiner, it was the trust company, rather than the timeshare provider, who was party to the relevant credit card network — so it could not be said the creditor and supplier were members of the same credit card network under which the card payment was made.

Regarding OFT v Lloyds TSB, the High Court in Steiner accepted the case was authority that there need not be a direct contract for "arrangements" to exist, but said the case:

"…is not authority for the proposition that if there are arrangements between a creditor and X, and if there are also arrangements between X and a supplier, then it necessarily follows that there are arrangements between the creditor and the supplier…"

The court went further to say — and I will paraphrase here — that in the absence of evidence of the bank's state of mind, it was difficult to envisage that a bank which issues a credit card to its customer, and makes a credit agreement in relation to that card, makes said agreement under, or in contemplation of, any arrangements other than the card network. The timeshare provider was outside the card network, and it's too much of a stretch to say the creditor made the agreement under both the card network and the agreement between the trust company and timeshare provider (of which the creditor was presumably unaware).

In short, the court didn't think the required DCS agreement existed for the claim against the timeshare provider.

In Mr F's case, his credit card payment went to P rather than the barrister (the relevant supplier). If the barrister was a member of the card network, then it could be argued that Halifax formed the credit agreement under pre-existing arrangements with the barrister, as both would be members of the same card network. And as a result, the required DCS

agreement would exist and allow Mr F to make a valid section 75 claim against the barrister. However, I've seen nothing to suggest that it's likely the barrister is, was, or was likely to become, a member of the relevant card network, or anything else that shows there exists some other arrangement between Halifax and the barrister.

I previously explained the clear delineation between the two separate contracts, which plainly show what party is responsible for what. Those contracts don't suggest the barrister is bound by any credit card network rules, that might indicate the barrister's membership of some card network. I also haven't seen anything else to show Halifax was ever aware of the end supplier (the barrister) – notably, the transactions generically list P as the payment recipient and don't mention the barrister. I appreciate Mr F said Halifax should have been aware of the barrister, given the barrister's name was on the sales documents – but there's nothing to show Halifax had been aware of those documents at the time of the transaction. In the circumstances, I'm not persuaded the necessary arrangements exist between Halifax and the barrister for there to be a valid DCS agreement. So I don't find Halifax acted unfairly when it said Mr F was unable to make a valid section 75 claim.

I've also thought about other, limited circumstances where a payment can be made to one party and the goods or services are supplied by another party, and section 75 will still apply. For example, section 75 could apply if there's a specific type of relationship between the party which took the payment (P) and the relevant party who supplied the goods or services (the barrister) – making the parties "associates", as defined in section 184 of the CCA. But I've not seen evidence that the barrister and P are business associates within section 184, so that exception doesn't assist Mr F here.

In summary, I don't think Halifax acted unfairly by discontinuing Mr F's chargeback claim, as it didn't have reasonable prospects of success. And I don't find Halifax was wrong to say it isn't liable for any breach of contract or misrepresentation by the barrister, as section 75 doesn't apply to the contract for legal services.

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.

Halifax accepted my provisional decision. Mr F didn't provide new documents, but he did raise three main objections:

- The chargeback had reasonable prospects of success and should have been progressed.
- The relevant regulations, case law, and statutory framework supports making a finding the relevant DCS agreement exists for a valid section 75 claim.
- There's a breach of contract for which Halifax is liable under section 75.

Mr F's further submissions run to 18 pages. I've considered everything he said. Much of it repeats points I addressed previously, so I haven't set it all out again in the same detail.

Instead, I've only commented on what I consider is key to explaining my findings and reaching a fair outcome. That's not meant as a discourtesy — it reflects my role in resolving disputes with minimum formality.

With that in mind, I've addressed Mr F's main objections in turn below.

Chargeback

Mr F accepts that if his claim met Mastercard's scheme rules and had reasonable prospects, Halifax should have progressed it. But he also said Halifax's decision to move the claim to pre-arbitration was strong evidence it would have succeeded, so it was unfair to stop it.

I don't agree that moving a claim to pre-arbitration, by itself, means a claim is likely to succeed. Issuers sometimes take a claim further for reasons other than it having good prospects — for example, to test whether a merchant would accept it. A claim's strength can also change as both sides add new evidence. So I don't think I should infer Mr F's claim was likely to succeed simply because Halifax had progressed it to pre-arbitration.

Whether this claim was likely to succeed depends on its merits against the merchant's defence, submitted via its acquirer. Mr F's claim was raised for the full amount paid under Mastercard's reason code "Goods or Services Not Provided".

Although Mr F was clearly unhappy with the barrister's service, the service was provided. For the reasons above and those in my provisional decision, I don't think the claim had reasonable prospects of success on the available evidence. I don't therefore find Halifax acted unfairly by stopping the chargeback.

DCS agreement under section 75

Mr F maintains the necessary section 12(b) CCA "arrangements" exist between Halifax and the barrister, a DCS agreement is in place, and section 75 applies. He cited regulatory and statutory provisions as well as case law in support, including OFT v Lloyds and Truman.

I've carefully reviewed the authorities Mr F cited. Much of this was addressed in my provisional decision. I've also kept in mind his point that consumer legislation should be read with the proper weight given to Parliament's intent.

I appreciate I need to be careful when working out the meaning of a particular statutory provision, especially if there's some ambiguity. But I don't think it's appropriate for me to interpret a statute differently to what the courts have already decided. As the courts have gone into detail over the meaning of the sections of the CCA that are relevant to Mr F's case, and in particular section 12(b), I find the courts' judgments to be most helpful for determining if section 12(b) CCA "arrangements" exist in Mr F's circumstances.

On the issue of what judgment I should place most weight on, Mr F maintains Truman most closely fit his circumstances. But for the reasons I've already set out in my provisional decision in detail, I don't think that's the case. In summary, the factual situation in Mr F's case is distinctly different from Truman, the law has evolved since Truman, and I don't think Truman is directly applicable here.

Instead, given the relevant judgments available, I consider the High Court judgment in Steiner the most helpful. I say that because the court commented more recently on what constitutes section 12(b) CCA "arrangements" than either OFT v Lloyds or Truman, and the High Court had the benefit of what had been said in those two cases.

Steiner highlighted "arrangements" between a creditor and a supplier shouldn't be inferred simply because there's a third-party with arrangements with both these parties. But Steiner also reaffirmed that arrangements, in limited circumstances, need not be direct.

For example, if a bank makes an agreement with a customer in relation to a Mastercard issued by the bank to that customer, the agreement is said to be made "under" the

Mastercard network. This would constitute “arrangements” between the bank and the other members of that network, such as a member supplier through whom services are bought.

However, in the absence of either a direct arrangement or the type of indirect arrangement inferred through a creditor and supplier being members of the same credit card network — Steiner is highly restrictive about what other circumstances might constitute “arrangements”.

In Mr F’s situation, there’s no evidence of any direct arrangement between Halifax and the barrister, nor is there any evidence the barrister was a member of the Mastercard network. So there can only be “arrangements” here if Mr F’s case fits this restrictive category.

Mr Justice Lavender explains at paragraph 61 in Steiner just how restrictive this category is:

“I find it difficult to envisage, however, in the absence of specific factual evidence as to the bank’s state of mind, that a bank which issues a Mastercard to its customer and makes a credit card agreement in relation to that card makes that agreement under, or in contemplation of, any arrangements other than the Mastercard network...”

I think that makes it clear that unless an end supplier is a member of the credit card network, it’s unlikely a credit card issuer would have “arrangements” with that supplier. Unless there was specific knowledge about the credit card issuer’s state of mind through which an “arrangement” with that supplier might be reasonably inferred.

Here, there’s little evidence with which I can reasonably infer Halifax’s “state of mind” from. For example, there’s nothing to suggest Halifax was aware of the sales documents listing the barrister. The relevant transaction also does not list the barrister, only P. So I cannot reasonably infer Halifax knew of the barrister’s existence at the time of the transaction, let alone that it had “arrangements” with him. Nor have I seen anything to suggest the barrister was a member of the MasterCard network, through which “arrangements” might be inferred.

What I can infer is Halifax might have known Mr F had transacted with P as a supplier of platform services in its own right, through which it charges a fee for those services. But I don’t think that’s enough to say Halifax therefore had “arrangements” with the barrister.

I appreciate Mr F’s point that his case doesn’t involve a trust deed and so is dissimilar to Steiner in that respect. I accept that’s the case. However, as Mr Justice Lavender in Steiner had not sought to limit his judgment to cases only involving a trust deed, I consider Steiner to have wider application. In contrast, Judge Ian Hughes QC in Truman was explicitly reluctant to creating a “general principle” for determining what constitutes arrangements and instead preferred a “case-by-case” approach.

I’m aware of other Financial Ombudsman decisions where a DCS agreement was found even though payment wasn’t made directly to a supplier. However, the previously published decisions aren’t binding and involve different facts, so I don’t find they provide much assistance here.

I don’t think the necessary section 12(b) CCA arrangements between the barrister and Halifax are in place to create a valid DCS agreement. So I don’t find Halifax acted unfairly when it said Mr F didn’t have a valid section 75 claim. It follows that I don’t have to make a finding on whether there has been a breach of contract because, even if there was, Halifax isn’t liable for it under section 75.

For those reasons, and the reasons set out in my provisional decision, which forms a part of this decision, I don’t find Halifax handled Mr F’s chargeback or section 75 claim unfairly.

My final decision

My final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 September 2025.

Alex Watts
Ombudsman