

The complaint

Mrs N complains Tesco Personal Finance Limited trading as Tesco Bank has treated her unfairly by failing to respond to a claim brought under Sections 75 and 140A of the Consumer Credit Act 1974 ("CCA").

Mrs N is represented in her complaint by a professional representative ("PR").

What happened

I issued a provisional decision on Mrs N's complaint on 13 October 2025, in which I set out the background to the case and my provisional findings on it. A copy of that provisional decision is appended to, and forms part of, this final decision. Because of this, it's not necessary for me to go over all the details again, but in very brief summary:

- Mrs N had bought a timeshare in September 2013 and made a part-payment towards it using her Tesco Bank credit card. The card payment had not gone to the timeshare supplier, but to a trustee company.
- PR said it later brought a claim against Tesco Bank on behalf of Mrs N, in respect of misrepresentations and wrongdoing by the supplier of the timeshare, giving her claims under Sections 75 and 140A of the CCA.
- There was a great deal of confusion as to whether and when Tesco Bank had been presented with this claim, and the nature of any response it had made. The matter ended up being referred to the Financial Ombudsman Service where there were then further delays.

The matter was looked into by an Investigator, who thought Tesco Bank should be given an opportunity to properly address the claim brought on Mrs N's behalf, as it hadn't yet been able to do so. Mrs N disagreed, arguing the bank had had more than enough time, and so the case ended up being passed to me to review.

In my provisional decision I made a number of findings. The full findings can be found in the appended document, however to summarise again:

- I considered it was neither here nor there whether or not Tesco Bank had been given a fair opportunity to address the underlying claims. It seemed all parties had struggled to communicate effectively with one another, but ultimately the bank's failure to honour the claim (assuming it had been presented) was not an unfair or unreasonable outcome.
- This was because one of the key ingredients which needed to be present for a Section 75 or Section 140A claim to be valid, was what was known as a debtor-creditor-supplier ("DCS") agreement. This DCS agreement was not present in Mrs N's case, because her credit card payment had not been made to the timeshare supplier and had instead been paid to a trustee company.

- I noted that there was case law – in the form of the case of *Steiner v. National Westminster Bank Plc* [2022] EWHC 2519 (KB) (“Steiner”), which dealt specifically with Mrs N’s scenario, even to the extent that it involved the same trustee company. In Steiner, the High Court had determined that a DCS agreement allowing a debtor to make a valid claim, did not exist due to the payment having been made to the trustee company rather than the timeshare supplier. Given the high degree of similarity between Mrs N’s scenario and that in Steiner, I thought a court would have been likely to draw the same conclusions. It followed that I considered there was no DCS agreement in place allowing her to make a valid claim under Sections 75 or 140A of the CCA, against Tesco Bank.

In light of those findings, I concluded that Mrs N’s claims had always been destined to fail, so the bank’s failure to honour them had not resulted in Mrs N having been treated unreasonably or unfairly.

I asked the parties to the complaint to provide me with any further comment before I made my decision final. Tesco Bank didn’t respond. PR responded on Mrs N’s behalf to say it had nothing to add.

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 I have received no further submissions from either party, and having reviewed the evidence again, I see no reason to depart from the findings and conclusions I reached in my appended provisional decision and as summarised above.

It follows that I won’t be upholding Mrs N’s complaint because it was not unfair or unreasonable of Tesco Bank to have failed to honour her Section 75 and Section 140A claims.

My final decision

For the reasons explained above, and in my appended provisional decision, I do not uphold Mrs N’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs N to accept or reject my decision before **2 December 2025**.



Will Culley
Ombudsman

COPY OF PROVISIONAL DECISION

I've considered the relevant information about this complaint.

Having done so, I've arrived at a different set of conclusions to our Investigator, though the outcome of the complaint remains the same overall. I'm issuing this provisional decision to allow both parties to the complaint to provide further submissions before I make my decision final.

The deadline for both parties to provide any further comments or evidence for me to consider is **27 October 2025**. Unless the information changes my mind, my final decision is likely to be along the following lines.

If I don't hear from Mrs N, or if they tell me they accept my provisional decision, I may arrange for the complaint to be closed as resolved without a final decision.

The complaint

Mrs N complains Tesco Personal Finance Limited trading as Tesco Bank has treated her unfairly by failing to respond to a claim brought under Sections 75 and 140A of the Consumer Credit Act 1974 ("CCA").

What happened

Mrs N bought a timeshare on 27 September 2013 from a timeshare provider (the "Supplier"). She used her Tesco Bank credit card to make what appears to have been a partial payment towards the purchase, of £2,080. The payment was made to a trustee company, rather than the Supplier directly.

Mrs N later brought a claim or complaint, with the assistance of a professional representative ("PR"). PR says it wrote to Tesco Bank with this on 23 September 2019.

The parties to the case are well aware of the nature of the underlying claims, but broadly-speaking Mrs N complained the Supplier had misrepresented the timeshare to her, this being actionable against Tesco Bank under Section 75 of the CCA, that it had wrongfully sold the timeshare to her as an investment, and had unfairly pressured her into making the purchase, these two latter matters giving rise to a claim against Tesco Bank under Section 140A of the CCA.

No response was forthcoming from Tesco Bank, so PR referred the matter to the Financial Ombudsman Service in June 2022. We wrote to Tesco Bank in June 2023 to ask it look into the case. It is unclear why this took so long. Five months later, PR sent us a copy of a witness statement from Mrs N. We wrote back to ask if Tesco Bank had responded yet to the complaint. We then didn't hear from PR for another seven months, when it wrote to ask for an update. It said Tesco Bank had not responded to the complaint or sent it any correspondence.

Further confusion then arose because it became apparent that multiple cases had been set up on the Financial Ombudsman Service's systems in relation to the same matter. Eventually however, we began looking into the complaint ourselves in August 2024.

Tesco Bank wrote to us to say that it wasn't satisfied PR had the authority to represent Mrs N, and asked for a recent "letter of authority". Our Investigator explained this wasn't

required because Mrs N had signed a copy of our complaint form.

The bank then informed our Investigator that it had never heard from PR back in September 2019, and had only been notified of the issues in June 2023. It said it had written several times to PR after this point to ask for further information, but had not received a reply with the information it had asked for. The bank complained that it hadn't had a fair opportunity to consider Mrs N's concerns and asked that this be taken into account by our Investigator.

Our Investigator issued an assessment on 1 November 2024. He concluded Tesco Bank hadn't been unreasonable in requesting further information from PR to help it assess the Section 75/140A claim. PR had failed to provide this, so the bank had closed the claim but expressed a willingness to consider it further if the information it had asked for was provided. That hadn't been unreasonable. Our Investigator said it was fair that the bank be given an opportunity to answer the claim. If Mrs N was dissatisfied with the bank's answer to the claim, then she could make a new complaint.

PR, on Mrs N's behalf, said it had never heard anything from Tesco Bank so it didn't know what information it had asked for. It asked that the matter be considered by an Ombudsman, and the case has now been passed to me to decide.

What I've provisionally 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.

Having done so, I don't think it should be upheld.

First of all, I will say that I draw no conclusions as to whether or not Tesco Bank has had a fair opportunity to consider the underlying claims. PR says it sent the claims to the bank in September 2019. The bank says it never received them. All parties seem to have struggled to communicate effectively with one another, but my view is that, whether or *not* the bank received the claims back in September 2019, a failure to honour the claims would not have been unfair or unreasonable. In fact, it would have been the right outcome. So Mrs N has not been unfairly treated in not having her claims met. I'll explain why.

In order for a claimant to be able to make a successful claim under Sections 75 or 140A of the CCA, there needs to be something in place which I will refer to as a valid debtor-creditor-supplier ("DCS") agreement. In Mrs N's case, there is no valid DCS agreement in place, because her credit card payment was not made to the Supplier, and instead went via a trustee company.

The relevant legal provisions are as follows:

s.75(1) CCA 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) CCA states that a 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”.

s.140A CCA states:

“(1) The court may make an order under section 140B in connection with a credit agreement if it determines that the relationship between the creditor and the debtor arising out of the agreement (or the agreement taken with any related agreement) is unfair to the debtor because of one or more of the following –

- (a) any of the terms of the agreement or of any related agreement;*
- (b) the way in which the creditor has exercised or enforced any of his rights under the agreement or any related agreement;*
- (c) any other thing done (or not done) by, or on behalf of, the creditor (either before or after the making of the agreement or any related agreement).*

(2) In deciding whether to make a determination under this section the court shall have regard to all matters it thinks relevant (including matters relating to the creditor and matters relating to the debtor).

(3) For the purposes of this section the court shall (except to the extent that it is not appropriate to do so) treat anything done (or not done) by, or on behalf of, or in relation to, an associate or a former associate of the creditor as if done (or not done) by, or on behalf of, or in relation to, the creditor.”

Section 140C CCA says that the reference in s.140A CCA to a “related agreement” includes a linked transaction in relation to the main agreement, which is defined in s.19 CCA as:

“(1) A transaction entered into by the debtor or hirer, or a relative of his, with any other person (“the other party”), except one for the provision of security, is a linked transaction in relation to an actual or prospective regulated agreement (the “principal agreement”) of which it does not form part if -

...

(b) the principal agreement is a debtor-creditor-supplier agreement and the transaction is financed, or to be financed, by the principal agreement...”

What all of this means is that for a valid claim under s.75 CCA, there needs to be a valid DCS agreement in place. In practical terms it means Mrs N (the debtor) needs to have used her Tesco Bank (the creditor) credit card to pay the Supplier (the supplier). On the face of it, this didn't happen in Mrs N's case because the Supplier was not paid directly using the credit card. Rather, than payment was made to the trustee company.

In some circumstances a valid DCS agreement can still be in place, even if the supplier is not paid directly using a credit card. The law in this area was clarified by the judgment in *Steiner v. National Westminster Bank Plc* [2022] EWHC 2519 (KB) (“Steiner”). *Steiner* considered whether there was a valid DCS agreement in circumstances where the same trustee company took payment on a credit card in relation to the purchase of a timeshare from a different timeshare supplier. The court considered the arrangements between the parties and concluded that, as the payment to the Supplier was made outside of the credit card network, in that instance there was not a valid DCS agreement in place.

The circumstances of Mrs N's case are very similar. The only difference is in the identity of the timeshare supplier – the rest of the arrangements appear to be the same, including the identity of the trustee company. Based on the judgment in *Steiner*, I think a court would come to a similar conclusion and say that there was no valid DCS agreement in place and, in turn, no valid s.75 CCA claim as the Supplier was not paid under an agreement involving the card network, but through a third-party trustee.¹

I've also thought about how the *Steiner* judgment affects Mrs N's claim under s.140A of the CCA. Under that provision of the CCA, one can only consider how the agreements between Mrs N and the Supplier affected the fairness of the credit relationship between her and Tesco Bank if there was a valid DCS agreement in place. And, as already explained, I do not think such an agreement was in place.

It follows that I think the claims brought by PR on behalf of Mrs N would have been doomed to fail because a fundamental ingredient for their success was missing. It wouldn't be fair to conclude Tesco Bank ought to be responsible for the Supplier's alleged wrongdoing in circumstances where it has no legal liability.

In light of the above, I don't think Tesco Bank treated Mrs N unfairly or unreasonably by failing to honour the claims she brought under sections 75 and 140A of the CCA.

My provisional decision

For the reasons explained above, I'm not minded to uphold this complaint.

Will Culley
Ombudsman

¹ I think had the third party been a type of payment intermediary recognised as such by the card networks (for example, a payment facilitator), then I'd have drawn a different conclusion, however the arrangements here appear to mirror those in *Steiner*, which the court specifically found did not constitute a valid DCS agreement.