

## **The complaint**

Mr D complains that Bank of Scotland plc trading as Halifax didn't treat him fairly when he requested a refund of costs he'd paid in part with his credit card.

## **What happened**

Mr D paid a deposit of £100 on a used car with his Halifax credit card on 12 December 2022.

He paid the remainder by bank transfer a few days later, and the total amount came to £23,025. Mr D had sourced the car through the manufacturer's national website, and it was sold to him by an approved dealer.

Shortly after acquiring the car, Mr D experienced a problem with the infotainment system in that it was missing a feature. He got in touch with the dealer and received detailed help but this didn't solve the problem. Mr D found a workaround for the missing feature by installing an alternative system in March 2023. Mr D says he now has a dual system in place with a switchable screen, but the problem with the original system remains.

Mr D was unable to resolve his complaint about the infotainment system with the dealer to his satisfaction and asked Halifax for help in June 2023. Under Section 75 of the Consumer Credit Act (CCA) 1974 Halifax could be held jointly and severally responsible for any breach of contract or misrepresentation relating to the sale of the car because Mr D paid for it in part with credit it provided.

During the bank's investigations, the dealer carried out diagnostic testing on a car of the same age and model to the one Mr D bought and concluded that the issue he'd experienced was not an isolated one. The dealer told Mr D in November 2023 that the feature in question was also missing on the other car, and that the manufacturer had confirmed that it hadn't been available since 2020. The dealer offered to cover the cost of the car's next service as a gesture of goodwill to resolve Mr D's complaint.

Mr D wasn't happy with this resolution. He'd obtained a quote of £3,152.40 from another approved dealer to replace the original infotainment unit sold with the car and asked for a refund of this amount to resolve his complaint. The selling dealer said that even if the unit were to be replaced with another unit from the manufacturer, it was unlikely this would fix the problem. It appeared that the feature had been disabled by the manufacturer in response to the switch off of the UK's 2/3G network - its operation required connection to a phone using the 2/3G network and so was redundant without it.

Halifax declined Mr D's claim relating to the infotainment unit. It said this was because the dealer's offer was fair and reasonable, and a cash resolution could be considered a gain for Mr D because the price of the car would not have been reduced even if this issue were known at the point of sale.

Mr D referred his complaint to us. Our investigator looked into it but didn't recommend that it be upheld because there wasn't enough evidence to show that there had been a breach of

contract or misrepresentation by the dealer, and so Halifax hadn't treated Mr D unfairly by declining his claim.

Mr D disagreed with this recommendation and asked for his complaint to come to an ombudsman to decide and it came to me. I issued a provisional decision on 13 January 2025 explaining why I wasn't planning to uphold Mr D's complaint and sharing the information I relied on. I allowed time for the parties to comment on what I'd said or provide any new information they wished me to consider in my final decision.

Halifax agreed with my provisional decision. Mr D didn't, and provided some comments for me to consider when making my final decision.

Mr D experienced other issues with the car, some of which have been resolved to his satisfaction either directly with the dealer or via a Section 75 complaint to Halifax. I understand that Halifax upheld Mr D's claim under Section 75 regarding paintwork damage, for example. My decision deals solely with whether or not Halifax got anything wrong in how it dealt with Mr D's Section 75 claim about the infotainment system.

### **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.

Having considered the matter again, including what Mr D said in response to my provisional decision, my findings remain the same. I'll set out again my reasons for not upholding Mr D's complaint in this final decision.

As I said in my provisional decision, Section 75 of the CCA offers protection to consumers by making the lender jointly and severally responsible for any misrepresentation or breach of contract for goods paid for with credit. I'm satisfied the CCA is relevant here taking into account the cost of the car, the amount Mr D paid with his credit card and the relationships between the parties involved.

I've considered whether the car was misrepresented to Mr D or whether the dealer breached the contract of sale.

### **What is the issue?**

Mr D got in touch with the dealer shortly after taking delivery of the car to complain about several issues, one of which concerned the infotainment system. Mr D was struggling to connect his phone to the system, which meant he couldn't use some of its features. The dealer told Mr D in an email on 17 January 2023 that it had upgraded the system's software and it was now ready to be paired with his mobile phone. The problem remained, however, and on the 9 February the dealer emailed Mr D detailed instructions on how to connect his phone to the system.

Mr D explained to us that he was able to use some of the features of the infotainment system. For example, he was able to make and receive telephone calls; access satellite navigation; access media files by plugging in his portable MP3 player, and tether to his mobile phone to listen to digital radio. Mr D said he was unable to access internet sites via the system while the car was stationary.

When the dealer couldn't solve the problem, Mr D replaced the infotainment system in March 2023 with one which would enable internet connectivity and integrate with the existing system.

Mr D explained that he uses the replacement system to access his mobile phone's features and to browse the internet using the car screen while stationary. He is able to access online content such as Netflix, YouTube and news webpages, as well as Google Maps for navigation purposes, for example. He is able to toggle between this new system and the original system and can still use its features mentioned above.

Mr D says that the infotainment system has never worked as it should and that he should be compensated for this. Mr D suggested different resolutions for his complaint including returning the car for a refund or a reduction in the cost of the car to the value of a replacement infotainment system, being over £3,000.

#### Was the car misrepresented to Mr D?

In order to conclude that the car was misrepresented to Mr D, I not only need to find that Mr D had been told something untrue about the car, but that the untruth persuaded him to buy it when otherwise he would not have done so.

Mr D told us that he paid the full asking price for the car and subsequently found that it was missing a feature that he expected it to have and that he wasn't informed of its absence. Mr D said the car was advertised on the manufacturer's national website as including the infotainment system.

The dealer said it doubted the car had been advertised as having the specific feature Mr D is complaining about (the internet connectivity) because it tended to advertise the main features of a vehicle and, as this wasn't a main feature, it wouldn't have made it into the advertisement. Halifax's investigation concluded that the car was advertised as having the infotainment system, albeit without a listing of all the features.

Neither Mr D nor the dealer were able to supply a copy of the actual advertisement. However, it seems all parties agree that the infotainment system was likely to have been listed as an item of equipment, and I note that the manufacturer's own website currently includes this in its advertisements for used cars of a similar age and model. The Vehicle Order Form described the model Mr D bought as a "C 250 AMG Line Saloon Premium Plus". I understand that the Premium Plus equipment package offered the infotainment system. Altogether, I think Mr D reasonably assumed that he was buying a car which had the enhancement of the Premium Plus package, and the car was in fact supplied with the infotainment system.

Mr D said that he would not have gone ahead with his purchase, had he known about the lack of the feature in question and all the other problems he had with car. Without any evidence that the feature formed part of the advertisement or that Mr D specifically asked about this feature before buying the car, it's not reasonable for me to conclude that he was told something untrue about the car.

I appreciate that, with hindsight, Mr D feels he would not have bought the car and that he has been wronged in this regard. Given that the feature was one of several of the infotainment system, that Mr D was able to make use of the system's other features and that within a few months he was able to put in place a workaround to enable him to have this feature, I think it's more likely than not that Mr D would have continued with his purchase even had he been made aware at the time that the feature had been discontinued. In summary, I have not found that the car was misrepresented to Mr D.

#### Was there a breach of contract in relation to the sale?

The Consumer Rights Act 2015 (CRA) implies a term into any contract to supply goods that those goods will be of satisfactory quality, and gives consumers rights when they have problems with the goods or services they've bought with credit. Providing goods of unsatisfactory quality might be considered a breach of contract.

Satisfactory means what a reasonable person would expect, taking into account the description of the goods, the price and any other relevant circumstances. The quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability. An issue with any of these aspects of quality doesn't necessarily mean that the goods provided were of unsatisfactory quality – it depends on the circumstances. In this case the relevant circumstances might include the nature of the issue and the age of the car.

For the reasons I've set out above, I can't reasonably find that the car wasn't as described, but I have considered other aspects of quality, for example whether the car was free from defects when it was sold to Mr D without the internet connectivity, whether it was still fit-for-purpose etc.

The car was six years old when Mr D bought it. I've borne in mind that technology moves on rapidly and some features of an original technical specification might not be supported or might not even be relevant anymore, as the way we use technology changes. As mentioned above, it seems the dealer didn't know about the issue with connectivity at the point of sale, and the reason for the removal of the feature was outside of the control of the manufacturer being the result of the switch-off of the UK's 2 and 3g networks. Mr D was able to use other features of the infotainment system, and it seems the workaround he installed provided him with additional functionality.

I've concluded that, in this particular case, the fact that the feature was no longer supported by the manufacturer due to the underlying technology becoming obsolete doesn't mean that the car was not of satisfactory quality when it was supplied. Therefore, there wasn't a breach of contract on the part of the dealer when it supplied the car to Mr D without this feature.

### Distress and Inconvenience

I understand Mr D spent money on a replacement system, which he sourced himself having struggled to implement the dealer's instructions to put things right and without an explanation as to why the system didn't work as he expected. Aside from the obvious inconvenience, Mr D says that this issue has impacted on his enjoyment and use of the car.

I've found that the car wasn't misrepresented to Mr D nor was there a breach of contract. Outside of these considerations, I can't hold Halifax responsible for any issues Mr D had with the car or the dealer.

Mr D asked Halifax for help in June 2023 and it provided a final response to his complaint in January 2024. I haven't found that Halifax's actions compounded the distress and inconvenience of the matter or that it treated Mr D unfairly. I've concluded that it wouldn't be appropriate for me to direct Halifax to pay Mr D compensation for this aspect of his complaint.

### In summary

I haven't found that the car was misrepresented to Mr D or that the dealer breached the contract of sale, and so I am not upholding Mr D's complaint.

I appreciate that this is a very disappointing outcome for Mr D as he has spent money and time trying to resolve this issue since early 2022. He told us in his complaint referral that he feels Halifax is trying to duck out of its responsibilities by not compensating him for all of the issues he had with the car.

Mr D said in response to my provisional decision that that he paid almost £570 to have another system fitted by a third party supplier to provide the lacking feature on the car's infotainment system in March 2023. He said he took this action before the dealership discovered that the feature had been withdrawn by the manufacturer. Mr D feels that had the dealership known about this issue, then the car would have been advertised accordingly and reduced in price. Mr D feels he should be refunded this cost.

I said in my provisional decision, and above, that it was more likely than not that Mr D would have continued with his purchase even had he been made aware at the time that the feature had been discontinued. This was because the feature was one of several of the infotainment system, Mr D was able to make use of the system's other features, and within a few months he was able to put in place a workaround to enable him to have this feature. It seems the workaround Mr D installed provided him with additional functionality beyond the lacking feature, which reasonably contributed to the cost of the item and so it isn't possible to determine how much the lacking feature itself cost to replace.

That aside, I can't reasonably find that Halifax ought to refund any of Mr D's costs for the purchase and installation of another system when it doesn't seem likely that the car would have been offered at a reduced price. The dealer confirmed to Halifax that the missing feature on the infotainment system would not have resulted in a decrease in the price of the car because the car was sold with the system and the feature in question was one of several features of the infotainment unit.

As before, I want to acknowledge Mr D's strength of feeling on this matter and I accept that it has had an emotional impact on him as well as a financial one. I am sorry that he's had such difficulty, and that I can't provide the resolution he's seeking. However, as I've explained, Halifax cannot be held responsible except in circumstances where a misrepresentation or breach of contract occurred, neither of which I've found to be the case here.

### **My final decision**

For the reasons I've explained above, I am not upholding Mr D's complaint about Bank of Scotland plc trading as Halifax and it doesn't need to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 April 2025.

Michelle Boundy  
**Ombudsman**