

The complaint

Mr K has complained about the way Bank of Scotland plc trading as Halifax “Halifax” responded to his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

The facts in this case aren’t disputed so I’ve only briefly set them out. Mr K bought a solar panel system (including batteries) “the system” for his home in December 2015 from a supplier I’ll refer to as E. Mr K used his Halifax credit card to pay £2,000 towards the cost of the installation, but in total he paid £8,700 for the system.

In November 2020, Mr K raised a claim with Halifax under section 75 of the Consumer Credit Act (CCA) 1974 (s.75) and raised the following issues:

- That the benefits associated with the system were misrepresented to him and he was promised greater returns than what he was actually receiving.
- That the battery and inverter were installed incorrectly which was a safety risk – he wanted this problem rectified under the 10-year warranty offered by E.
- He was subsequently told that E had only registered a 2-year warranty when it had told him it provided a 10-year warranty.

Between 2020 and 2022, Halifax and Mr K went back and forth regarding the claim. Essentially Halifax asked Mr K to provide an independent report detailing the problems with the system in order to support his claim under s. 75. Mr K did receive a quote for £2,359.20 from a third party who agreed to inspect the system and produce a report. But Mr K wanted Halifax to pay for the report. He also raised concerns over Covid 19- restrictions which meant the report might be delayed. Halifax agreed to pay for the report on receipt of the invoice to show Mr K had paid the expert but confirmed it was unable to pay for it in advance. Mr K didn’t want to pay for the report himself and instead wanted Halifax to pay for it directly.

In March 2025, Mr K sought to raise his concerns again. But Halifax responded to explain, that it had still received no evidence to support Mr K’s claim for misrepresentation or breach of contract and it would no longer consider a claim under s.75, as Mr K’s claim was now passed the six-year time limit under the Limitation Act 1980 (LA) to raise such claims with the Court. Halifax did pay Mr K £50 compensation in relation to delays in responding to Mr K’s data subject access request (DSAR). It issued final responses for both issues.

Unhappy Mr K referred the matter to this service. He said Halifax had caused the delays by being obstructive, asking for an expensive report that it wasn’t willing to pay for in advance, and it hadn’t notified him of the six-year time limit during the years he had tried to raise his concerns. He said he’d raised his concerns long before the six-year time limit was up.

Mr K’s complaint was considered by one of our investigator’s. She felt that Mr K’s s.75 claim was likely time barred under the LA so it wasn’t unreasonable for Halifax to refuse to consider the claim any further. But she felt that Mr K could bring a claim under section 140 of

the CCA (s.140) and assess whether any misrepresentation or failings had occurred at the time of sale, and whether this then made the relationship with Halifax unfair.

She explained that as Mr K was the one making the claim that E had misrepresented the system to him, the onus was on him to prove his claim, and Halifax did not act unfairly by asking for a report to prove his claim. She felt Halifax agreeing to pay for the report irrespective of the outcome of Mr K's dispute went further than Halifax was obligated to do under the law. She added that while E did provide Mr K with some estimates, it explicitly said that the estimates were difficult to estimate with any certainty and therefore weren't guarantees. So, she didn't think there was sufficient evidence of a misrepresentation on this basis so could not conclude that this made the relationship with Halifax unfair under s.140 of the CCA.

Our investigator subsequently added, that although Mr K was given a warranty by E that said the warranty period was 10 years (rather than the 2 years that was registered with his insurance provider), in response to this, we would expect Halifax to consider any claims under the warranty. Under the terms of the warranty, Mr K was still expected to provide evidence that he had a valid claim at his expense. And Halifax had asked for an independent report to prove Mr K's claims and went further than the warranty terms by agreeing to pay for it.

Mr K disagreed for the following reasons:

- The law around s. 75 was outdated and in need of reform
- Halifax didn't break down the specific evidence it required, only asking for an independent report. Had specific evidence been requested, it could have been provided sooner.
- No consideration had been given due to the Covid 19- restrictions which meant providing the report had been delayed.
- He felt Halifax had been obstructive and insisted on Mr K paying for a report that cost over £2,000, and then recovering the cost, rather than paying for it directly itself.

Our investigator explained her view remained unchanged. She clarified that Mr K's s. 75 claim could likely only be considered if it had been lodged with the court within 6 years from when the misrepresentation/breach of contract happened (which was December 2015) or if Halifax had agreed to waive the time limit, or if both parties mutually agreed to disapply the time limits in writing. None of that happened so she felt that Mr K was likely out of time to bring a s.75 claim due to the LA.

As the complaint couldn't be resolved by our investigator, I've been asked to make 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.

Firstly, I'd like to reassure both parties that I've thought carefully about everything both parties have provided, but I will only be dealing with the points that I find are key in this complaint. So, while I may not comment on everything said and provided, I have considered everything submitted before reaching my conclusions.

Section 75 claim under the CCA

It may be helpful to explain that I need to consider whether Halifax – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr K's claim. But it's important to note Halifax isn't the supplier. S. 75 is a statutory protection that enables Mr K to make a 'like claim' against Halifax for breach of contract or misrepresentation by a supplier paid using a credit card for the provision of goods or services.

There are certain conditions that need to be met for s. 75 to apply. From what I've seen, those conditions have been met, and Halifax has also appeared to agree that s. 75 applies.

Mr K said that E breached the contract by not completing the installation correctly (mainly in relation to the battery and inverter) during the installation of the system. He also says the system was misrepresented to him in relation to the returns he could expect to achieve. So, he says Halifax is jointly liable under s.75. But if Halifax could show the claims were now outside of the time limits set out in the LA, it would be entitled to rely on the LA as a defence to answering the claim.

I should make it clear however that I'm not deciding if any right that Mr K may have to bring these claims has expired under the LA - that's a matter for the courts. In this decision I'm considering if Halifax has acted fairly and reasonably in turning down Mr K's claim under s. 75.

For a claim for breach of contract, a claimant has six years to bring a claim from when the breach of contract took place. My understanding is that the system was installed in December 2015, so Mr K had six years from then to ask the courts to consider his claim against Halifax. For misrepresentation, Mr K has six years to make a claim from the date on which the cause of action accrued – so as the system benefits and warranty information was given to him during the sale, which would have been around December 2015, he had again six years from then to raise this claim in court.

So, I don't think Halifax acted unfairly in turning down this claim as it felt the claim was time barred under the LA. I appreciate Mr K's concerns over delays caused by Covid-19 restrictions and Halifax's refusal to pay for the independent report in advance of Mr K ordering and paying for it – but there are no provisions for this under the LA. And while I've thought about Mr L's viewpoint that the laws in this area are outdated and in need of reform, it doesn't change that currently this is the applicable law. So, I couldn't fairly conclude that Halifax must now consider Mr K's claims under s. 75.

Section 140 claim under the CCA

I can consider whether Mr K's relationship with Halifax is likely to be deemed unfair under s.140 of the Act due to the issues Mr K has raised. But having carefully considered everything provided, for broadly the same reasons as those explained by the investigator, I don't think there's sufficient evidence to enable me to make a finding that a court is likely to conclude that Mr K's relationship with Halifax is unfair, and I'll explain why. Halifax did review the claim under s.140 after the complaint was referred to our service, and confirmed it doesn't think the relationship is unfair due to the concerns raised by Mr K.

Misrepresentation

Halifax asked Mr K to provide evidence of his claim in the form of an independent report to identify the issues with the system that require remedial action. This is in response to Mr K's claim for misrepresentation and the alleged faulty installation. As Mr K is making the claim, the onus is on him to evidence that claim. It is not uncommon for any costs associated with proving a consumers claim to be borne by them. This is normally only refunded if a claim is accepted by the bank, who then offers a remedy. But in this case, Halifax went further than that by offering to cover the costs of the report whatever the outcome of his dispute.

I don't doubt that providing evidence of this nature is both costly and time consuming for Mr K – but as explained, under the law, as Mr K is making the claim, the responsibility to prove it is on him. I don't think Halifax acted incorrectly by asking for this evidence nor by only offering to refund Mr K the costs of it once it had been paid for by him.

I've looked at the documentary evidence produced by Mr K, and as set out by our investigator, it doesn't look like E offered any guarantees in relation to the benefits associated with the system. And I've seen no evidence that it isn't performing as expected or that its faulty as alleged by Mr K. Without the report requested by Halifax, there's little evidence to support Mr K's claim.

Based on the evidence available, I don't think there's sufficient evidence in this case that the information given to Mr K amounted to a misrepresentation. So, I am unable to conclude that Mr K's relationship with Halifax would likely be deemed unfair. So, I don't think I could uphold the complaint on this basis and direct Halifax to offer a remedy

Warranty

It looks like E provided Mr K with a warranty for a period of 10 years but became insolvent within that period. I understand the insurance backed warranty was only for a period of two years, but Mr K felt it should've been for a period of 10 years so this also amounted to a misrepresentation. But even if that is true, Mr K would still need to establish that he has suffered loss in relation to this, so he is entitled to a remedy.

Mr K feels the installation hasn't been completed correctly, poses a safety risk, and it requires remedial works including potentially replacing the items. But as set out by his warranty terms, he is obligated to provide evidence to support the claim that he is entitled to remedial action in line with the warranty terms. So again, I don't think Mr K has provide any evidence to support his allegation that, he is entitled to remedial action under the warranty and that E has failed to carry out a repair in line with the warranty it offered him due to it now being insolvent. Only then could I consider whether any alleged failings on the part of E, made Mr K's relationship with Halifax unfair.

Summary

Overall, I don't think Halifax acted unreasonably by explaining that Mr K's claim under s.75 is likely time-barred under the LA. I also don't think he's provided sufficient evidence that any alleged failings of E now makes his relationship with Halifax unfair under s.140. So, with that in mind, I find no grounds to direct Halifax to offer him a remedy. I should point out, that Mr K doesn't have to accept this decision. He can pursue the matter more formally through the courts, and ultimately it's up to the courts to decide whether his s.75 claim is time-barred, or whether his relationship with Halifax is unfair.

My final decision

For the reasons I've explained, I don't uphold this complaint.

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

Asma Begum
Ombudsman