

The complaint

Mr F complains that Bank of Scotland plc trading as Halifax ("Bank of Scotland") did not uphold a claim under Section 75 of the Consumer Credit Act 1974 ("The Act"), as well as its handling of the claim.

What happened

In May 2021, Mr F purchased a solar panel system from a supplier, which I'll refer to as "Company E". As part of this, Mr F agreed to participate in a beta testing phase of a new product (referred to as a "Smart Miner"), which would generate renewable energy certificates that were sold, with Mr F in effect being paid 10p per kWh for the electricity generated by his solar panel system.

Mr F paid for the solar panel system using his Bank of Scotland credit card. So, the purchase benefitted from the protection provided by Section 75 of The Act.

My understanding is that Smart Miner, the beta testing, and the benefits from it were provided via a separate company, which I'll refer to as "Company R". Company E installed the Smart Miner as part of Mr F's solar panel system so that Mr F could take part in the beta testing program.

Mr F understood that the benefits of the system, including from the Smart Miner, Smart Export Guarantee payments and savings on his energy bills, would mean the system would pay for itself within five or six years. Mr F says that after three months his enrolment in the Smart Miner beta testing program was terminated and Company E "removed" the warranties and guarantees for the solar panel system.

Mr F then made a complaint to Bank of Scotland, saying that the system had been misrepresented to him or there had been a breach of contract, since he was no longer receiving the benefits of the Smart Miner, which meant the system would not pay for itself within five or six years. So, he wanted a full refund and for the system to be removed and his property reinstated.

Bank of Scotland rejected the claim. It said that there had not been a misrepresentation or breach of contract, and that Company E had in any case offered a full refund to Mr F, which he had not accepted.

Our investigator looked into what happened but didn't recommend the complaint should be upheld. She felt that Bank of Scotland's response to the claim had been reasonable. Mr F disagreed, so I've been asked to make a decision.

Mr F has recently provided a surveyor's report which he says shows the solar panels were incorrectly installed and require remedial work to ensure there is no water ingress into his property. Our investigator explained that evidence should be forwarded to Bank of Scotland for it to consider, as that was not available to it when it responded to the Section 75 claim I have been asked to consider.

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.

Section 75 of The Act says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider and the supplier of goods or services if there's either a breach of contract or misrepresentation by the supplier. I am able to consider a complaint about how Bank of Scotland, as the creditor, has responded to Mr F's Section 75 claim. It is not my role to look at how Company E handled its relationship with Mr F or any complaints he made to that company. Or to look at any actions taken by Company R. Although I've taken into account that after about three months Mr F no longer got any benefits from the Smart Miner beta testing program.

It appears that Mr F's relationship with Company E has completely broken down. Company E says it offered to remove the system and provide a full refund on two occasions, but that Mr F did not take up those offers. It then offered to remove the system but deduct the cost of doing so from the refund amongst some other conditions. Other than if that offer was taken up, which it wasn't by the deadline given by Company E, then Company E was no longer willing to deal with Mr F or to attend his property. Mr F didn't accept any of the offers from Company E and instead contacted Bank of Scotland.

I understand that Company R terminated Mr F's enrolment in the beta testing phase of its Smart Miner product and that it had a right to do so. It offered to refund the amount Mr F paid for the Smart Miner, which Mr F rejected. I think that what happened between Mr F and Company R, and Company R's decision to remove Mr F from the beta testing program, is not something I can look at.

I do not think this situation was reasonably foreseeable at the time the system was sold. At that time, it was a reasonable expectation that Mr F would be able to partake in the beta testing phase of the Smart Miner system, and at first he did so successfully. So, I do not think the projections of the likely income from the Smart Miner were a misrepresentation at the time of sale.

The available evidence indicates the solar panel system is generating electricity as expected. So, there was no breach of contract in terms of how much electricity it could generate. The income from the Smart Export Guarantee and energy savings were derived from how much electricity the system would generate, so I don't think those figures were a misrepresentation either.

I don't think the Smart Miner benefits were contractual – the quote describes the stated benefits as estimates and not guaranteed. Mr F was also enrolled in the beta testing phase of the product, and Company R's terms and conditions stated it had the right to terminate the program (or an individual's participation in it) at any time.

The issues, photos and roofer's comments Mr F initially provided in terms of how the system was installed were considered by Bank of Scotland. But Company E explained to Bank of Scotland that the solar panels were installed to the correct standard. This appears more persuasive than the roofer's comments, as they appear to have been based solely on a photo of the roof and in some cases suggesting checking with the supplier or the standards body to ensure it was installed properly.

The surveyor's report about these issues was not available at the time – so understandably was not taken into account by Bank of Scotland. If Mr F wants Bank of Scotland to consider that report and to pursue this aspect of the claim further, then he should forward the report to

Bank of Scotland. I will not comment on that further since Bank of Scotland hasn't had the opportunity to look at the report.

Mr F has complained that the warranties and guarantees were "removed" by Company E. But it appears those warranties and guarantees were provided by separate legal entities to Company E. So, Company E cannot revoke, cancel, or remove them, and it appears that they remain in force.

Overall, I'm satisfied that Bank of Scotland obtained relevant evidence in order to consider Mr F's section 75 claim. And I do not think its response was unreasonable, although it could've explained its reasons more clearly.

I have not found that there was a misrepresentation or breach of contract on the part of Company E when selling the solar panel system. Or that Bank of Scotland should've done anything further in terms of the alleged installation issues based on the evidence that was available before it responded to the claim.

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 F to accept or reject my decision before 2 November 2023.

Phillip Lai-Fang
Ombudsman