

The complaint

Mr P has complained that Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") rejected his claim against it under Section 140 of the Consumer Credit Act 1974. A representative is assisting Mr P with his complaint.

What happened

Mr P bought a solar panel system ("the system") for his home in 2014. The purchase was funded with a loan from BPF, and that business is therefore liable for the misrepresentations made by the supplier under the relevant legislation. In this case, Mr P alleges that the supplier misled Mr P into believing that the panels would be self-funding.

Mr P's complaint was considered by one of our investigators. He thought that there wasn't sufficient evidence to persuade him that the system had been mis-represented to Mr P so he didn't think the complaint should be upheld in Mr P's favour.

Mr P (through his representative) disagreed for the following reasons:

- He said that the sale was conducted based on verbal representations made by the supplier.
- While the supplier's promotional material changed by December 2014 (the time of sale), earlier promotional material did suggest the systems were self-funding. The representative believes the salesperson was still selling the system as self-funding.
- Mr P also informed us that he didn't complain earlier as he didn't know he could complain.
- Mr P's representative also provided details of another complaint which was upheld in favour of the consumer where there were no sales documentation – they felt that case had similar circumstances to Mr P's so ought to also be upheld.

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.

Our investigator has explained why we have jurisdiction to consider this complaint, and considering neither party has disagreed with this, I don't need to consider this any further.

I think the CMC and BPF ought now to be familiar with all the rules, regulations and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach, as our investigators have previously set this out for them. So, I don't consider it necessary to set all of that out again in this decision.

Having carefully considered everything provided, for the same reasons as those explained by the investigator, I do not uphold this complaint.

Firstly, I'd like to explain that neither BPF nor Mr P have been able to provide much paperwork from the time of sale. Where there is such limited evidence, I have to make a decision based on the available evidence – that includes Mr P's testimony. I would add that while there may be many complaints where point of sale paperwork is no longer available (like the one Mr P's representative has referred to), each case is decided on the individual merits of that case. I've explained why I haven't upheld Mr P's case below.

Mr P (through his representative) said in his letter of claim that he was led to believe that the system would pay for itself due to the payments he would receive from the Feed in Tariff (FIT). The letter later says he thought the finance would be covered by a combination of the FIT payments and savings made on his energy bills.

When Mr P spoke directly with our investigator, he added that he was told he needed to agree to the purchase immediately as the FIT rate would be changing so in order to qualify for the current FIT rate – he needed to agree to the purchase straight away. He said his main motivation was to sign up for the FIT rate in place at the time. Mr P says he was told his electricity would be free during the day. Mr P doesn't mention any specific benefit amounts or mention any specific figures he was given at the time of sale about the systems likely performance.

As set out by our investigator, there is no evidence from the time of sale that the supplier was promoting the systems as being self-funding when Mr P bought his system. Additionally, the supplier appeared to be trading for many years after Mr P bought his system and at no point did Mr P raise these issues while the supplier was still trading.

I've thought very carefully about Mr P's testimony bearing in mind this is the main evidence available in this case. But having done so, like our investigator, I'm not satisfied that the system was mis-represented to Mr P on the basis it would be self-funding or that Mr P relied on a statement like this, and this was the main reason he purchased the system.

Mr P's representative says that while the promotional material around the time of sale did not advertise the system as self-funding, they feel the salesperson may still have been selling it as self-funding. But they've provided no evidence to support that belief other than Mr P's testimony.

But Mr P's testimony isn't very specific or detailed regarding what exactly he was promised – other than mentioning that he thought the system benefits would cover the finance. For example, he doesn't specify whether he thought the system would be self-funding over the term of the loan, or from the outset or during the lifetime of the system. In order for me to uphold this case, I would need to be satisfied that the salesperson did more than make generalist comments about how well these solar panels usually perform – or that they promoted the system to him - that's the nature of selling items.

I'd need to be satisfied that the salesperson made the specific misrepresentation to Mr P, that his system would be self-funding within a specified period, that he relied on this misrepresentation and bought the system on that basis, but this has turned out to be untrue.

Mr P seems to stress that his main motivation for buying this system was to obtain the FIT rate in place at the time. As set out by our investigator, the supplier was also trading for many years after the sale and if Mr P's benefits was significantly less than what he had been promised or what he expected, I would have expected him to raise that – and I've seen no evidence that he did.

Based on what I've seen, I'm afraid, I'm not satisfied there's sufficient evidence that the supplier made a specific misrepresentation, or that Mr P relied mainly on that misrepresentation to buy the system which would be needed to uphold the complaint.

I've carefully considered Mr P's testimony, but each case is decided on the individual merits of that case. On balance, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint.

Mr P has mentioned that he felt pressured to proceed with the sale. But I note that Mr P was given a cancellation period and he didn't try to cancel within that period. If he was unhappy to proceed with the sale, I would have expected him to have utilised this option. Pressure can also be subjective, and Mr P hasn't provided much testimony as to why he felt like he had to proceed with the sale. Overall, I'm not satisfied that he was pressured into buying the system.

Mr P's representative says that BPF didn't check Mr P's creditworthiness before offering him the loan. However, BPF says it did do sufficient affordability checks. It also seems like Mr P maintained the payments on the loan for many years after the sale, so it doesn't look like there's any evidence the loan was unaffordable.

Mr P's representative has also added that Mr P wasn't given a cancellation period. However, the cancellation period was set out in Mr P's offer letter and pre-contractual information from BPF. I also haven't seen any evidence that Mr P wanted or tried to cancel and was unable to do so.

I've also considered what Mr P's representative has said about the undisclosed commission. But, even if BPF should have said more about the commission, BPF has told us the commission was only £200. Its amount is unlikely to have impacted on Mr P's decision to proceed with the finance agreement. I also consider it unlikely that a court would find the payment of commission would result in an unfair relationship under S140A Consumer Credit Act.

So, these issues do not affect my view of the complaint.

Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that there were no untrue statements of fact made by the supplier that induced Mr P to enter into the contract for the system, and I have found no other reason to uphold this complaint. So, I don't think BPF's decision to not accept the claim was unfair.

My final decision

For the reasons I've explained, I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 3 January 2024.

Asma Begum

Ombudsman