

The complaint

Mr C 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.

What happened

Mr C purchased a solar panel system ("the system") for his home in 2014 and financed it through a 10-year fixed sum loan agreement with BPF. The system was subsequently installed. Mr C alleges that the installer misled him into believing that the panels would be self-funding, which they weren't. He says this caused his relationship with BPF to be unfair.

BPF didn't agree the system had been misrepresented to Mr C or that its relationship with him was unfair.

Mr C's complaint was considered by one of our adjudicators. He thought that the benefits of the panels were mis-represented to Mr C, and that fair redress would be for the loan to be restructured to make the panels cost no more than the benefit they would provide over a ten-year period. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

BPF didn't agree saying that it had seen one other complaint from this supplier where the consumer was given a quotation document which clearly set out the estimated benefit, but Mr C had not provided a copy of this. BPF felt that the cost was clearly set out in the credit agreement, and Mr C would have been given a quotation document. So BPF thought that the evidence suggested it was unlikely the system was misrepresented to Mr C in the way he was now asserting. BPF added that this particular supplier had not been identified as a supplier with systemic sales issues when it carried out a review of its suppliers.

Our adjudicator explained that he had not seen such a quote in this particular case and so his view remained unchanged. BPF reiterated its earlier points.

As an agreement couldn't be reached, the case was passed to an ombudsman.

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 as neither party has disputed this, I don't need to set this out again in this decision.

BPF is 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. So, I don't consider it necessary to set all of that out in this decision.

Having carefully considered everything provided, for broadly the same reasons as those explained by the adjudicator, I uphold this case and I'll explain why.

When Mr C responded to our adjudicator's questions regarding what he could recall from the sale, Mr C said he wanted to buy the system to save money as well as help the environment. He says he was assured the system would be self-funding due to the benefits received from the system. He added the supplier did write down some figures, but he did not leave the document behind. I find Mr C's testimony to be reliable and persuasive as his testimony has been clear and consistent throughout.

I've looked at the documents Mr C has retained and submitted. There is a purchase order which sets out the cash price of £9,961 and the SAP generation figure of 3260 kWh. But this doesn't have the estimated benefits in financial terms. Mr C also signed a credit agreement which set out his costs clearly.

But I haven't seen a single document that sets out the estimated benefit in financial terms that made it clear the system wouldn't be self-funding.

I have considered the sample document BPF has referred to from the one other case it has received against this supplier. And it did set out the estimated benefit on that case as well as the cash price. But I would remind BPF that each case is decided on the individual merits of that case. And a quotation document being provided in one case is not independently strong evidence of a supplier's overall sales practices. There's no evidence that such a document was likely provided in this case, or that it was completed correctly or what figures might have been given to Mr C.

I appreciate the point BPF is trying to make, and we have seen other suppliers where estimated returns or quotation documents have been completed correctly and provided on most of their sales. This is a good indicator of the overall sales practice of that supplier which in some cases holds weight. But while considering how much weight to put on the sample document BPF has supplied, I have to bear in mind that BPF haven't been able to provide a quotation document in this case, that Mr C says he wasn't left with any such document (and he can't provide what he doesn't have) and that BPF have only seen that document in one other case.

Overall, based on what I've seen in this particular case, like our adjudicator, I'm still of the view the evidence supports the conclusion that a misrepresentation took place and Mr C was not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for him.

As I think the system has been misrepresented to Mr C as self-funding and he bought the system on that basis. I think a court could likely conclude there existed an unfair relationship under section 140 of the Consumer Credit Act 1974. As Mr C has likely lost out because of what the supplier did wrong, I think BPF should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr C's complaint for BPF to put things right by recalculating the original loan based on the known and assumed savings and income to Mr C from the solar panels over a 10-year period so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

In the event the calculation shows that Mr C is paying (or has paid) more than he should have, then BPF needs to reimburse him accordingly. Should the calculation show that the

misrepresentation has not caused a financial loss, then the calculation should be shared with Mr C by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require BPF to restructure Mr C's loan. It should recalculate the loan to put Mr C in a position where the solar panel system is cost neutral over a 10-year period.

Normally, by recalculating the loan this way, a consumer's monthly repayments would reduce, meaning that they would've paid more each month than they should've done resulting in an overpayment balance. And as a consumer would have been deprived of the monthly overpayment, I would expect a business to add 8% simple interest from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr C have the following options as to how he would like his overpayments to be used:

- A. the overpayments are used to reduce the outstanding balance of the loan and he continues to make his current monthly payment resulting in the loan finishing early,
- B. the overpayments are used to reduce the outstanding balance of the loan and he pays a new monthly payment until the end of the loan term,
- C. the overpayments are returned to Mr C and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr C and he pays a new monthly payment until the end of the loan term.

If Mr C accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

If Mr C has settled the loan, BPF should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mr C has settled the loan by refinancing, he should supply evidence of the refinance to BPF, and BPF should:

- 1. Refund the extra Mr C paid each month with the BPF loan.
- 2. Add simple interest from the date of each payment until Mr C receives his refund.
- 3. Refund the extra Mr C paid with the refinanced loan.
- 4. Add simple interest from the date of each payment until Mr C receives his refund.
- 5. Pay Mr C the difference between the amount now owed and the amount he would've owed if the system had been self-funding

I'm satisfied that there was sufficient information available at the time that Mr C first contacted BPF that means the claim should have been upheld. I direct that BPF should pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr C's complaint. Clydesdale Financial Services Limited trading as Barclays Partner Finance should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 January 2024.

Asma Begum
Ombudsman