

The complaint

Mr H has complained that Sainsbury's Bank Plc ("Sainsbury's") rejected his claim against it under Section 75 of the Consumer Credit Act 1974. A representative (the CMC) is assisting Mr H with his complaint.

What happened

Mr H bought a solar panel system ("the system") for his home in 2019. The purchase was funded in part with a Sainsbury's credit card, and that business is therefore liable for the misrepresentations and/or breach of contract of the supplier under the relevant legislation. In this case, the CMC alleges that the supplier misled Mr H into believing that the panels would be self-funding.

Mr H's complaint was considered by one of our investigators. They thought there wasn't sufficient evidence the system had been misrepresented to him so didn't think the complaint should be upheld.

The CMC disagreed for the following reasons:

- Our investigator hadn't given any consideration to the verbal representations made by the supplier.
- Mr H couldn't provide documents that were never given to him.
- There was also no evidence that, even if documents had been given to him, that it was referred to during the sale.
- It didn't matter whether the system had generated power as it was designed to, Mr H's complaint was about the financial benefits not being sufficient to cover the cost of the system.
- That Mr H couldn't raise his complaint with the supplier sooner as it took a significant amount of time to get this system commissioned and therefore receiving any income. By the time Mr H sought to raise any concerns, the supplier had ceased trading.

As the complaint couldn't be resolved by our investigator, I have 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.

In this case the relevant law includes section 56, section 75 and section 140 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr H paid for the system partly with a credit card, Sainsbury's agrees that section 75 applies to this transaction. This means that Mr H could claim against Sainsbury's, the creditor, for any misrepresentation or breach of contract by the supplier in the same way he could have claimed against the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Section 56 is also relevant. This is because it says that any negotiations between Mr H and the supplier, are deemed to have been conducted by the supplier as an agent of Sainsbury's. And Section 140A is about unequal relationships between the parties to a credit agreement.

For the purpose of this decision, I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

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

Firstly, I'd like to explain that neither Sainsbury's nor Mr H 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 H's testimony and any other documentation either party have been able to submit as well as the wider circumstances.

Mr H (through his CMC) said, in his letter of claim, that he was led to believe that the system would pay for itself in a few years. This would be due to the income he would receive from the power generated by the system and savings made on his energy bills.

When our investigator spoke to Mr H directly, he provided further testimony. He said he couldn't recall the conversation in detail as a long time had passed since the sale. He added that he doesn't believe the supplier actually specified the system would be self-funding, but he had a feeling the savings and benefit received would pay for the system in "no time". He says he recalls being told that with a little bit of investment, he would reap the rewards of the system. Mr H also doesn't recall what (if any) paperwork he was given but doesn't think he would have paid a deposit without some paperwork.

So, I'm afraid, Mr H's testimony isn't very specific or detailed regarding what exactly he was promised – other than mentioning that he "felt" the system would pay for itself. For example, he doesn't specify whether the supplier actually made the verbal representation that the system was self-funding, whether it broke down the specific amounts he would likely get, hasn't provided any facts and figures mentioned during the sale, and hasn't provided the usual documentation we see from suppliers like the estimated returns document. Most notably, he accepts the supplier may not have actually told him the system would be self-funding.

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 a specific misrepresentation about Mr H's system, and that he relied on this misrepresentation and bought the system on that basis.

I have to bear in mind that, outside of Mr H's very brief testimony, there is no other evidence from the time of sale that, the supplier was promoting the systems as being self-funding when Mr H bought his system. The only evidence available of the misrepresentations that the CMC has alleged is in the letter of claim – but Mr H's own verbal testimony given directly to our investigator doesn't actually support the allegation that the supplier made a specific representation that the system was going to be self-funding. If this representation had been made, and Mr H had relied on it and bought the system on that basis, I would have expected him to recall this – people often remember the main reasons that drove them to agree to such a substantial purchase.

Furthermore, Mr H says that his brother had a solar panel system installed in his home, and after a conversation with him, Mr H sought out his supplier (who was local to him) to have the system installed. He says his reasons for installing the system was due to him being conscious of energy costs, energy prices rising and energy sufficiency. So, it doesn't look like Mr H was contacted and convinced to buy the system like we've seen in other cases – there was no need as Mr H seems to have already wanted them before he even got in touch with the supplier.

I've thought very carefully about this complaint, and the letter of claim the CMC submitted, bearing in mind this is the main evidence in support of the claim. But having done so, I'm not satisfied that there is sufficient evidence here that the system was mis-represented to Mr H on the basis it would be self-funding or that Mr H relied on a statement like this, and this was the main reason he purchased the system. Each case is decided on the individual merits of that case, and on balance, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint.

I've gone on to consider whether a court may conclude that there existed an unfair relationship under section 140A the Act. A sufficient inequality of knowledge and understanding is considered a classic source of unfairness in a relationship between a creditor and a consumer. But considering I haven't found any misrepresentation; I think a court is unlikely to conclude that there is an unfair relationship under section 140.

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 H to enter into the contract for the system, and I have found no other reason to uphold this complaint. So, I don't think Sainsbury's decision to not accept the claim was unfair.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 December 2023.

Asma Begum

Ombudsman