DRN-4309719

The complaint

Mrs A complains about Clydesdale Financial Services Limited trading as Barclays Partner Finance's response to a claim she made under sections 75 and 140 of the Consumer Credit Act 1974.

What happened

In 2014, Mrs A purchased a solar panel system ("the system") using a loan from Clydesdale, which was repayable over 120 months.

In 2021, a claims management company ("CMC") made a claim to Clydesdale on Mrs A's behalf. This alleged that the supplier of the system had misrepresented it as being self-funding, in that the savings and income from the system would cover the loan repayments, so Mrs A would not be worse off each month. The CMC also said that Mrs A's relationship with Clydesdale was unfair on her because of the misrepresentation and:

- Mrs A was pressured into the purchase because the credit agreement was not explained so Mrs A did not fully understand the costs.

Clydesdale rejected the claim, which it said had been made too late under the Limitation Act 1980. Unhappy with this the CMC made a complaint on Mrs A's behalf about Clydesdale's response. Since Clydesdale did not change its position, Mrs A asked the Financial Ombudsman Service to look at the complaint.

Our investigator said the claim under section 140 had been made in time, since the relationship between Mrs A and Clydesdale ended in January 2022 (when the loan was paid off), but she did not think the complaint should be upheld. Mrs A did not accept this, so I've been asked to make a decision. The CMC at this point raised the issue of Clydesdale paying commission to the supplier – something that was not mentioned in the letter of claim. But Clydesdale has provided information on this and agreed that I can address that as part of my decision, which I have done for completeness.

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 140 of the Consumer Credit Act allows the courts to consider whether the relationship between a creditor and debtor is unfair on the debtor. When doing so the court takes account things done or not done on the creditor's behalf in relation to any linked agreement – in this case the sale of a solar panel system. So, I've thought about whether the actions of the supplier when selling the system might have created an unfair relationship between Clydesdale and Mrs A.

Having taken everything relevant into account, I've decided not to uphold this complaint.

The sales documents from the supplier are not available in this case. Mrs A has not retained them and nor has the supplier due to how long ago the sale took place. The credit agreement shows what Mrs A had agreed to pay. And I'm not persuaded that she did not fully understand this, given the information in the credit agreement is set out clearly. She was also provided with the required pre-contract information including her right to cancel.

Mrs A has told us that she could not remember how the benefits were explained to her, other than that she would receive free electricity (which is not an untrue statement of fact, since any electricity generated by the solar panels that she used would not need to be paid for). And she could not accurately remember details of the loan, such as how long the repayment term was. So, it is not the case that Mrs A has a clear, detailed, and consistent recollection of the sale that is plausible and persuasive enough for me to accept what she says happened is most likely what did happen.

That's especially the case given that Mrs A did not make the claim until around seven years after the sale. I think it would've been clear to her that the benefits of the system were not covering the monthly loan repayments within a few months of the sale (allowing time for the first Feed-In Tariff payments to be received). And if that was not in line with what she was expecting, then I would have expected her to make a claim or complaint about this much sooner. This makes it harder for me to accept the allegation as being accurate without any additional evidence.

I've considered what Mrs A 's representative has said about the supplier receiving commission from Clydesdale which was not disclosed to Mrs A. This was not included in the claim made to Clydesdale. But, even if it was and if Clydesdale should have said more about the commission, Clydesdale has told us the commission was only £110.25. I think this amount is unlikely to have impacted on Mrs A's decision to proceed with the credit agreement – even if that cost was passed onto her as part of the loan interest. I also consider it unlikely that a court would find the payment of this commission would result in an unfair relationship.

I think that Clydesdale could've done better when responding to the claim – in that it should've recognised that the claim under section 140 was not made too late. But overall, I am not persuaded that a court would find that the relationship between Clydesdale and Mrs A was unfair on her. So, even if Clydesdale had looked at the section 140 claim it would still have rejected it. As such I do not think that caused a significant impact on Mrs A.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 31 January 2024.

Phillip Lai-Fang
Ombudsman