

## **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. A representative (the CMC) is assisting Mr C with his complaint.

## **What happened**

Mr C 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 C alleges that the supplier misled Mr C into believing that the panels would be self-funding.

Mr C's complaint was considered by one of our adjudicators. He thought that the complaint should be upheld as BPF hadn't been able to provide the sales documentation specific to Mr C's sale showing it had made the cost and benefit clear. So, he thought the complaint should be upheld based on Mr C's testimony.

BPF disagreed. It highlighted that while it hadn't been able to provide the specific documents related to Mr C's sale, neither had Mr C. BPF also sent in sample documents that the suppliers were using, and this showed it did set out the cost and the benefit clearly – which would have made it clear the system wouldn't be self-funding.

As the complaint couldn't be resolved by our adjudicator, I was asked to make a decision.

In my provisional decision of 15 September 2023, I set out why I was minded to not upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. BPF replied acknowledging the provisional decision but had no further comments. Mr C did not respond.

## **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 my provisional decision I explained the following:

*Our adjudicator 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 adjudicators 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, currently, I do not intend to uphold this complaint.*

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

*Mr C (through his CMC) said, in his letter of claim, that he was led to believe that the system would pay for itself in 8 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.*

*However, beyond this, Mr C has provided no detail as to what exactly he was told about the system or why he relied on that information. We've repeatedly asked Mr C (through the CMC) for further information regarding what Mr C remembers from the time of sale – but have not received a response.*

*So, Mr C'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 cost in 8 years. For example, he doesn't specify whether the supplier 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 this supplier like the estimated returns document. 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 C's system, and that he relied on this misrepresentation and bought the system on that basis.*

*I've also thought about the other evidence available in this case. BPF has provided some sample documents used by this supplier which does show it set out the benefits and costs clearly to its consumer's – and this made it clear that the system would not be self-funding.*

*But Mr C has provided one page of his contract, and this doesn't match the documentation supplied by BPF. So, I think it's likely that the supplier used a different type of form for Mr C's sale. However, while that may be the case, it does give us an indication as to the supplier's sales practices and it does look like, in some cases at least, it did make the cost and benefit clear.*

*I've then gone on to think about the wider circumstances of this case. I understand that the supplier was trading for a number of years after the sale of Mr C's system, and I've seen no evidence that Mr C raised this with either the supplier or BPF until 2021. I think if Mr C was genuinely disappointed with the benefits he was receiving and expected the benefits to cover the cost of the system, when this didn't materialise, I would have expected him to have raised this and I've seen no evidence that he did. I also understand Mr C repaid this loan in 2018, and even at this stage he doesn't appear to have raised any concerns about the sale with BPF.*

*I also have to bear in mind that, outside of Mr C'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 C bought his system.*

*I've thought very carefully about Mr C's testimony, bearing in mind this is the main evidence Mr C has submitted. But having done so, I'm not satisfied that there is sufficient evidence here that the system was mis-represented to Mr C on the basis it would be self-funding or that Mr C 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 C 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.*

In the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. So having considered this case again in its entirety, I'm still satisfied that there were no untrue statements of fact made by the supplier that induced Mr C 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 explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 October 2023.

Asma Begum  
**Ombudsman**