

The complaint

Mr D has complains that Bank of Scotland plc trading as Halifax rejected his claim against it under Section 75 of the Consumer Credit Act 1974 ("the Act").

What happened

Mr D bought a solar panel system ("the system") for his home in 2016. He paid for it using his Bank of Scotland credit card. In 2021, Mr D's representative made a claim under Section 75 of the Act to Bank of Scotland, alleging that Mr D had been told the system would be self-funding, in that its financial benefits (income and savings) would cover the monthly loan repayments.

Bank of Scotland rejected Mr D's Section 75 claim. It said the sales documents didn't state that the panels would be "self-funding", the quoted benefits were estimates and not guaranteed, and so there was no misrepresentation.

Mr D's representative then contacted us to complain about Bank of Scotland's response to the Section 75 claim. One of our investigators looked into this, but they were satisfied that Bank of Scotland's response to the claim was fair and reasonable.

Mr D disagreed, so 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.

Section 75 of the Act says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's a breach of contract or misrepresentation by the supplier of goods or services.

I have the power to look at this complaint about whether Bank of Scotland's response to Mr D's Section 75 claim was fair and reasonable. In doing so, I can take into account the representations the supplier made during the sale, because Section 56 of the Act says that any negotiations between Mr D and the supplier are deemed to have been conducted by supplier as an agent of the credit provider.

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 its agent) to a second party which induces that second party to enter the contract, causing them loss.

Having carefully considered everything provided, I do not uphold this complaint.

Firstly, the letter of claim says the supplier misrepresented the system in that it said its financial benefits would cover the monthly finance repayments. I do not think this is plausible or persuasive, since Mr D paid for the system using his credit card. This means he did not have fixed monthly repayments (such as with a loan), so the supplier could not have known

how much Mr D would be paying each month. Given that was the claim that was made to Bank of Scotland, it does not seem unreasonable that the claim was rejected.

Mr D's representative later told our investigator that Mr D was actually told that the system would pay for itself within four years of purchase (although this was never previously mentioned to Bank of Scotland as part of the claim or complaint). Changing the allegation like this does tend to undermine a consumer's testimony, reducing the weight I can attach to it when making a decision. Nevertheless, I have for completeness also considered whether it is likely that the supplier would've represented the system in this way.

The purchase price was £7,500, so I've calculated that the financial benefits of the system would have to average £1,875 over the first four years for it to pay for itself within that time. But the estimated returns document that Mr D signed indicates that level of returns would be very unlikely.

The estimated returns document shows that the estimated first year benefit of the system as a whole was £753.99 (although even that included savings from installing LED bulbs rather than any benefit of the solar panel system itself). It does not specify the estimated benefit for years two, three or four. But if the benefit in year one was £753.99 then that would require benefits of £6,746.01 across years two, three and four – an average of £2,248.67. It seems implausible that the benefit of the system would increase so much in that time given it was expected to be just £753.99 in year one.

Overall, considering what is shown on the sales documents, which Mr D was given at the time of sale, I think it is unlikely that the supplier would've told him that the system would pay for itself within four years. I think it is more likely that Mr D was given the figures in the estimated returns document. He may have been told the system would be self-funding over its 25-year lifetime, since the figures show the estimated benefits in that time exceeding the purchase price. But if he was, I don't think that would be a misrepresentation.

In any case, I think Bank of Scotland's response to the Section 75 claim was fair and reasonable – particularly bearing in mind the misrepresentation it was asked to consider.

My final decision

For the reasons I've explained, I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 November 2023.

Phillip Lai-Fang
Ombudsman