

The complaint

Mrs W has complained about the way Bank of Scotland plc ("BOS") has dealt with a claim she made under section 75 of the Consumer Credit Act 1974 ("s.75").

What happened

Around September 2015, Mrs W entered into a contract to purchase a solar panel system ("the system") from a supplier. She paid for the system using a BOS credit card in multiple payments – the last payment being made on 9 October 2015. My understanding is that these amounts were paid off by February 2016 at the latest.

Mrs W wrote to BOS in August 2022 to make a claim under s.75. The purpose of s.75 is to provide protection for consumers who pay for goods or services using credit. The creditor (BOS) is jointly and severally liable with the supplier for any breach of contract or misrepresentation by the supplier – subject to certain considerations being met.

Mrs W's claim explained that the system had been misrepresented to her. She says she had been told that the Feed-In Tariff ("FIT") payments she'd receive for electricity generated and exported to the grid would cover off the cost of the system after a couple of years, making the system entirely self-funding.

BOS responded to say it had no liability, since the claim had been made outside of the time limits set out in the Limitation Act 1980. In this case, BOS said the claim had been made more than six years after the alleged misrepresentation had taken place.

Unhappy with BOS's response, Mrs W raised a complaint and referred the matter to this Service to look into. One of our investigators reviewed things but concluded that BOS had not acted unfairly by rejecting Mrs W's s.75 claim. In summary, our investigator said that Mrs W's claim against the supplier of the system was made outside of the timescales set out in the Limitation Act. As BOS (as the credit provider) is liable to the same extent as the supplier, our investigator agreed it had acted reasonably when saying the 'like claim' against it was made too late.

Mrs W disagreed. She said she didn't realise she'd been mis-sold the system until a few years later and so she felt she'd complained in time.

Since our investigator could not resolve the complaint, 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.

In this complaint I'm considering whether BOS has treated Mrs W fairly in its response to her s.75 claim. There are a number of things I've taken account of when reaching my decision, including the law, rules and regulations, good practice and the facts of Mrs W's complaint. In this decision I'll refer to those that I consider to be most central

to my conclusions.

Mrs W's complaint is about a claim under s.75 and so naturally the appropriate parts of the Consumer Credit Act 1974 are relevant here. As I've explained above, s.75 sets out why a claim can be made against BOS, and it can be held responsible for a purchase Mrs W made using her credit card. I'm satisfied in this instance that the debtor-creditor-supplier chain hadn't been broken and there's an appropriate relationship between the parties for BOS to consider a s.75 claim.

As the reason BOS gave for declining Mrs W's claim was that it was made outside of the relevant time limits, the Limitation Act 1980 is of particular relevance. The Limitation Act is the law which sets out the time limits which apply to different causes of action that a party can pursue.

s.2 of the Limitation Act states, "An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued".

Did Mrs W bring a claim within six years?

For me to determine whether a claim was brought within six years, I have to decide when the cause of action, or damage, took place. The damage is the financial loss arising as a result of the misrepresentation.

Mrs W's s.75 claim is largely that the benefits associated with the system were misrepresented and so she entered a contract which wasn't the value for money that she expected. Mrs W says that, were it not for the misrepresentation about the potential benefits covering the cost of the system within a couple of years, then she wouldn't have entered the contract to purchase the system at all.

So, Mrs W's financial loss occurred when she contracted to pay for the system using a credit card – the last payment being made in October 2015. She had six years from that date to make her claim, which is October 2021.

Mrs W raised her claim with BOS in August 2022. This is more than six years from when the damage occurred, and her cause of action accrued. So, the claim was not made in time, and neither the supplier nor BOS would have any liability, even if there was a misrepresentation.

s.9 of the Limitation Act states, "An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued."

I've considered this section because the basis of Mrs W's claim against BOS is under s.75 and so is a sum recoverable by virtue of enactment (statute law from an act of parliament). But I don't think this changes the position compared to the other provisions in the Limitation Act. s.75 makes the lender jointly and severally liable for a supplier's misrepresentation or breach of contract – effectively making BOS step into the shoes of the supplier.

This means that the limitation period under s.9 is the same as for misrepresentation and breach of contract – and gives rise to effectively the same cause of action. So, the claim was still not made in time.

Are there any grounds to extend the six-year time limit?

Although the limitation time period is six years for cause of action as set out above, the Act also provides for a second period in which a claim can be made. That is, if later than the six-year period, three years from the earliest date on which the claimant had both the knowledge required to bring a claim for damages, and the right to bring such a claim. Mrs W says she didn't realise the representations were untrue until a few years after the sale.

Mrs W says she sent BOS an email on 30 January 2023, and she's submitted a copy. This says:

"So, after a couple of years, I checked what I was receiving, which was nothing as I was expecting. When you take into account my monthly energy bills, I worked out that I would need to keep the panels for 22 years, until I saw any kind of profit, although the solar system only has a lifespan of 20 years, I will not see any kind of return on investment."

So, I have considered whether the claim period should be extended under the 3-year element of the rule, but I don't find the claim period should be extended beyond the original 6 years. Mrs W's issues relate to the solar panels, and associated benefits, not being in line with what she was led to believe by the salesperson. Mrs W would have been receiving feed in tariff payments, electricity meter readings, plus other things that would have alerted her to the fact that the solar panels were not producing the benefits Mrs W says she was told about. Generally, I think this should have been apparent around a year after taking out the solar panels. And definitely within two years as Mrs W appears to accept. As Mrs W should have therefore reasonably had cause to raise her claim within 2 years of taking out the panels, this would not extend the 6- year part of the Limitations Act further. So as our investigator explained, I don't think she was entitled to longer than six years to make her claim.

Claim under s.140 Consumer Credit Act

While Mrs W doesn't appear to have actually raised a claim under s.140, for completeness, like our investigator, I have also considered whether or not Mrs W would have a successful claim under s.140 of the Consumer Credit Act, which relates to Unfair Relationships.

Like s.75, there are however time limits for a claim to be considered under s.140 and Mrs W would have had 6 years from the end of the credit relationship with BOS to bring her claim. The credit with which Mrs W paid for the solar panels was paid off by February 2016. So, the relationship ended when Mrs W paid off the amounts she borrowed on her credit card to purchase the solar panels. Mrs W would therefore have 6 years from this date (so until February 2022) to bring a claim under s.140. But as set out already, no claim was submitted until August 2022, which is more than 6 years later.

Summary

Having considered the specific circumstances here, it is likely that any claim in court that Mrs W would have against the solar panel provider would be considered to have been made out of time, in relation to the alleged misrepresentation. And consequently therefore, any 'like claim' Mrs W may have had against BOS would also be considered out of time. Having considered the implications of the Limitations Act 1980 alongside the Consumer Credit Act, I don't consider BOS acted unreasonably when deciding Mrs W's claim for misrepresentation had been raised too late.

I appreciate Mrs W will remain unhappy with what I have set out here. I have noted what she has said about our website providing information about other successful claims that our service has decided. But those cases are likely to be where the claim was raised within the required timescales, which is unfortunately for Mrs W not the case here. And whether Mrs W

was actually misled at the time of the sale by the solar panel salesperson is not something I have actually considered here as her claim has been raised too late.

My final decision

My final decision is that I don't uphold Mrs W's complaint against Bank of Scotland plc

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 3 January 2024.

Asma Begum
Ombudsman