

## **The complaint**

Mr C has complained that Clydesdale Financial Services Limited trading as Barclays Partner Finance (“Clydesdale”) rejected his claim against it under sections 75 and 140 of the Consumer Credit Act 1974

## **What happened**

Mr C bought a solar panel system (“the system”) for his home in 2012. The purchase was funded by a loan from Clydesdale. In 2021, a claims management company (“the CMC”) made a claim to Clydesdale on Mr C’s behalf under sections 75 and 140 of the Consumer Credit Act 1974 (“the Act”).

Clydesdale rejected the claim on the grounds it had been bought too late due to the provisions of the Limitation Act 1980.

The CMC then made a complaint about Clydesdale’s response. Clydesdale rejected this complaint, so the CMC asked the Financial Ombudsman Service to look into what happened.

Mr C’s complaint was considered by one of our investigators. They recommended the complaint be upheld. The investigator thought that the claim under section 140 had been made in time, which Clydesdale has not disputed. And that the alleged misrepresentations were relevant to the fairness of the relationship between Mr C and Clydesdale under section 140 of the Act.

The investigator’s assessment was that Mr C’s recollection was likely accurate in terms of what he was told at the time of sale, and that the sales documents weren’t clear enough for him to realise this was wrong. And this made Clydesdale’s relationship with Mr C unfair on him so Clydesdale should put things right.

Clydesdale disagreed. It said it was unlikely that Mr C was told the system would be self-funding when the sales documents showed it would not be.

As the complaint couldn’t be resolved by our investigator, I’ve been asked to make a decision.

I issued a provisional decision explaining that I was not planning to uphold this complaint. This allowed Mr C and Clydesdale the opportunity to respond with anything further they wanted me to take into account when making my final decision. Clydesdale responded to say they had nothing further to add. Mr C nor the CMC responded by the given deadline. So, this final decision is in line with my provisional one – and I do not uphold this complaint.

## **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.

I have the power to look at this complaint about whether Clydesdale’s response to the claim

was fair and reasonable. In doing so, I can take into account the representations of the supplier during the sale, because Section 56 of the Act says that any negotiations between Mr C and the supplier are deemed to have been conducted by the supplier as an agent of the credit provider.

Since I can look at the allegations under section 140 of the Act, I do not need to consider section 75.

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, I do not uphold this complaint.

I do not find Mr C's recollection of events to be plausible and persuasive. The description of what he was told is inconsistent and/or contradictory, including the following statements made either in the letter of claim or when speaking to our investigator:

- The system would pay for itself within eight years.
- The benefits of the system would cover the monthly loan repayments.
- The system would pay for itself within the ten-year loan term.

I think there is a clear difference between the system's benefits covering the monthly loan repayments, which would mean they met or exceeded the monthly loan repayments from the start, and the system paying for itself within 8-10 years, which would allow the benefits to be less than the monthly loan repayments at the start but increase over time to exceed them and the overall cost in the stated timeframes.

So, I don't think I can rely solely on Mr C's recollection to determine what he was most likely to have been told. As such, I think the sales documents provide important information about what Mr C was likely told, as they would probably have been discussed when they were provided to him. I have seen the sales documents, including the sales contract and loan agreement – both of which Mr C signed.

This sales contract set out the cash price of the system (£9,895.50) directly underneath the total estimated year one (£696.25) and year five (£898.029) benefit of the system. These figures make it clear the benefits would not cover the monthly loan repayments from the start (or by year five), given that neither benefit figure is 10% or more than the cash price of the system (the loan being repayable over ten years). And this is before taking into account the loan interest, which increased what Mr C had agreed to pay overall.

The loan agreement sets out that the loan is repayable over 120 monthly repayments of £139.89 each and the total amount payable is £16,786.80. While this was not signed by Mr C until after the sales contract, I think this would reinforce or confirm the information from the sales contract which indicated the benefits would not cover the loan repayments for at least the first five years.

With all of this in mind, I think it is unlikely that Mr C would've been told that the benefits would cover the monthly loan repayments.

I am also not persuaded that it is likely Mr C would've been told the system would be self-funding within eight years or within the ten-year loan term. The information in the documents do not suggest that is likely. And given Mr C's contradictory descriptions of what he was told, I do not think his recollection is enough for me to conclude that he was told this despite what the sales contract showed.

Overall, I am not persuaded there was a misrepresentation that created an unfair relationship between Mr C and Clydesdale. So, while Clydesdale could've been more thorough in its response to the claim – by dealing with the section 140 claim which was bought in time – I do not think it acted unreasonably in declining Mr C's claim. So, I do not uphold this complaint.

### **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 Mr C to accept or reject my decision before 20 December 2023.

Phillip Lai-Fang  
**Ombudsman**