DRN-4503133

The complaint

Mr M 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 M bought a solar panel system ("the system") for his home in 2013. The purchase was funded by a loan from Clydesdale. In 2021, a claims management company ("the CMC") made a claim to Clydesdale on Mr M's behalf under sections 75 and 140 of the Consumer Credit Act 1974 ("the Act"). This alleged that the system had been misrepresented to Mr M as self-funding on a monthly basis through the Feed-In Tariff income and savings he would receive for generating and exporting electricity to the grid. And that this, amongst other things, made Mr M's relationship with Clydesdale unfair on him.

Clydesdale rejected the claim on the grounds that the Section 75 claim for misrepresentation 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 M's complaint was considered by one of our investigators. They recommended the complaint be upheld.

Clydesdale disagreed. It said it was unlikely that Mr M 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 the complaint.

Clydesdale acknowledged this and confirmed it had nothing further to add. The CMC responded on Mr M's behalf to clarify that his understanding was that the system would be self-funding through a combination of the Feed-In Tariff and savings on his electricity bill, rather than just through the Feed-In Tariff income. I have taken this into account, but this has not changed the outcome I reached in my provisional decision. And I am not upholding this complaint, for similar reasons to those given in my provisional 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.

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 M 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 am not upholding this complaint.

I have taken into account what Mr M recalls being told at the time of sale – that the Feed-In Tariff ("FIT") income and savings would cover the monthly loan repayments from the start so he wouldn't be out of pocket. But I cannot just accept this is what he was told without also thinking about the surrounding circumstances. This includes looking at the sales documents – including the sales contract and credit agreement. I think these provide important information about what Mr M might have been told, as they would probably have been discussed when they were given to him.

The sales contract set out the cash price of the system (£6,750.00), and that Mr M was paying a deposit of £1,000.00 with the remaining £5,750.00 being funded through finance. This is shown on the same page as the estimated FIT income in the first year. The FIT income is shown as £477.25 for generation, £74.31 for export and £272.26 for savings. The combined total first-year benefit is £823.81.

The credit agreement shows Mr M had agreed to repay the loan over ten years through monthly payments of £75.57 per month at a total cost (including deposit and interest) of £10,068.40. That equates to repayments of £1,006.84 per year. This is clearly more than the first-year benefit. So, the system would not be self-funding on a monthly basis within the first year.

I think the information in the sales documents make it clear the benefits would not cover the monthly loan repayments from the start. Mr M saw both these documents when agreeing to purchase the system and he signed them both. I think it is likely these documents were discussed at the time and that Mr M would've understood the first-year benefit and what he would be repaying under the loan agreement.

With this in mind, I think it is unlikely that Mr M would've been told that the benefit would cover the monthly loan repayments from the start. His recollection of what he was told is not enough to persuade me that the alleged misrepresentation took place. Especially considering how long he took to raise this issue, which ought to have been clear pretty soon after the panels were installed.

The CMC also mentioned some other reasons why it thought the relationship between Clydesdale and Mr M was unfair on him. This included that he was not given notice of his cancellation rights (Mr M's signature on the sales contract confirms he was given notice of his cancellation rights), that he was pressured into purchasing the system (Mr M's description of the sale when speaking to our investigator did not mention him feeling pressured into the purchase), that the credit agreement was not explained to him fully (I think the credit agreement is clear and Mr M would've understood it) and that Clydesdale received undisclosed commission (normally a lender would pay commission not receive it). But I am not persuaded that these allegations have been proven on the balance of probability. And I do not think there is sufficient evidence for me to conclude that a court would find the relationship between Clydesdale and Mr M was unfair on him.

Overall, I am not persuaded there was an unfair relationship between Mr M and Clydesdale.

So, while Clydesdale could've been more thorough in its response to the claim – by dealing with the section 140 claim rather than just saying the section 75 claim was made too late – overall I do not think it acted unreasonably in declining Mr M's claim. So, I am not upholding this complaint.

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 M to accept or reject my decision before 5 January 2024.

Phillip Lai-Fang
Ombudsman