DRN-4279822

The complaint

Mr M complains about Clydesdale Financial Services Limited trading as Barclays Partner Finance's response to a claim he made under sections 75 and 140 of the Consumer Credit Act 1974.

What happened

In 2015, Mr M purchased a solar panel system ("the system") using a loan from Clydesdale, which was repayable over 120 months.

In 2021, a claims management company ("CMC") made a claim to Clydesdale on Mr M's behalf. This alleged that the supplier of the system had misrepresented it as being self-funding, in that the savings and income from the system would cover the monthly loan repayments, so Mr M would not be worse off each month. The CMC also said that Mr M's relationship with Clydesdale was unfair on him because of the misrepresentation and because:

- Clydesdale failed to carry out a suitable creditworthiness check before providing the loan.
- The required pre-contract information was not provided to Mr M including details of his cancellation rights.
- The credit agreement was not properly explained to Mr M.
- The supplier was paid commission by Clydesdale which Mr M did not know about.
- Mr M was pressured into the purchase.

Clydesdale rejected the claim, which it said had been made too late under the Limitation Act 1980. Unhappy with this the CMC made a complaint on Mr M's behalf about Clydesdale's response. Since Clydesdale did not change its position, Mr M asked the Financial Ombudsman Service to look at the complaint.

Our investigator said the claim under section 140 had been made in time, since the relationship between Mr M and Clydesdale was ongoing (the loan has not been paid off), but she did not think the complaint should be upheld. Mr M did not accept this, so I've been asked to make a decision.

Mr M reiterated that he was told he'd be better off each month but instead is out of pocket because the benefits don't meet the loan repayments. He is also concerned that the system has not been inspected or serviced and the supplier is no longer in business.

The CMC said the commission may have been passed onto Mr M, increasing what he paid for the system.

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 140 of the Consumer Credit Act allows the courts to consider whether the relationship between a creditor and debtor is unfair on the debtor. When doing so the court takes account things done or not done on the creditor's behalf in relation to any linked agreement – in this case the sale of a solar panel system. So, I've thought about whether the actions of the supplier when selling the system might have created an unfair relationship between Clydesdale and Mr M.

Having taken everything relevant into account, I've decided not to uphold this complaint.

Mr M has suggested that some of the signatures on the sales documents were not his. But I think it is clear that he did agree to the purchase and to the loan. And he did not make this allegation as part of the claim he made to Clydesdale. So, I am not persuaded that I should disregard any of the sales documents.

Looking at the sales documents, I am satisfied that the estimated first-year benefit of the system was shown to be:

- From generating electricity £689.79
- From heating £160.00 plus £140.80

While the total combined first year saving of £990.59 is not shown, I think it is clear that the amounts shown were less overall than the loan repayments. These are clearly shown on the loan agreement as being £143.43 per month, which equates to £1,721.16 per year.

Given these figures were shown prominently on the sales documents, I think it is unlikely that the supplier would've misrepresented the system as paying for itself on a monthly basis.

I'm also mindful that Mr M did not make the claim in relation to a misrepresentation until more than seven years after the sale. I think it would've been clear to him that the benefits of the system were not covering the monthly loan repayments within a few months of the sale (allowing time for the first Feed-In Tariff payments to be received). And if that was not in line with what he was told, then I would have expected him to make a claim or complaint about this much sooner. This tends to undermine what Mr M has said.

In terms of the other reasons the CMC has suggested that Clydesdale's relationship with Mr M was unfair, I am not persuaded a court would reach that conclusion.

Clydesdale has provided information about the checks it carried out before offering the loan to Mr M. And I'm satisfied these were suitable. It also appears that the required pre-contract information was provided to Mr M including details of his cancellation rights.

There is no suggestion that Mr M did not fully understand the credit agreement. And the credit agreement itself provided the necessary information about what it would cost him.

I've considered what Mr M 's representative has said about the supplier receiving commission from Clydesdale which was not disclosed to Mr M. But, even if Clydesdale should have said more about the commission, Clydesdale has told us the commission was only £494.96. I think this amount is unlikely to have impacted on Mr M's decision to proceed with the credit agreement. I also consider it unlikely that a court would find the payment of this commission would result in an unfair relationship.

In terms of the allegation that Mr M was pressured into the purchase, this claim appears to have been largely based on the alleged misrepresentation and lack of information provided to Mr M. But I have not found these allegations to be sufficiently plausible and persuasive such that I could reasonably uphold this complaint.

The CMC's point about the commission potentially increasing Mr M's costs if it was passed onto him appears to misunderstand the commission payment that was made. The payment was made by Clydesdale to the supplier. So, if this was passed onto Mr M it would've reduced his costs, not increased them.

Clydesdale could've done better when responding to the claim – in that it should've recognised that the claim under section 140 was not made too late. But overall, I am not persuaded that a court would find that the relationship between Clydesdale and Mr M was unfair on him. So, even if Clydesdale had looked at the section 140 claim it would still have rejected it. As such I do not think that caused a significant impact on Mr M.

Mr M's concerns about the inspection and servicing of the system are a separate matter. Generally speaking, such systems don't need much maintenance and are not regularly serviced. So that is not unusual. Mr M can check his generation meter to see if it is generating electricity as expected (as well as checking his feed-in tariff statements). Clydesdale has confirmed that Mr M may be able to make a separate claim if the system is not working properly, subject to relevant evidence being provided. So, Mr M should contact Clydesdale if that is the case.

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 M to accept or reject my decision before 31 January 2024.

Phillip Lai-Fang
Ombudsman