

The complaint

Mrs R has complained about the way Clydesdale Financial Services Limited (trading as Barclays Partner Finance ("BPF")) has dealt with a claim she made under section 75 of the Consumer Credit Act 1974 ("s.75").

What happened

In 2014 Mrs R entered into an agreement for the supply and installation of a solar panel system from a company called 'My Planet'. The system was paid for by a loan arranged with BPF.

Mrs R says she was told by My Planet that the financial benefits generated by the solar panels would cover the cost of the loan and she would get free electricity. Those benefits would come in the form of energy cost savings and Feed-in Tariff ("FiT") payments from selling excess energy back to the grid. But the system hasn't performed as Mrs R was expecting.

Under s.75 a finance company can be held responsible for misrepresentations or breaches of contract to the same extent as the supplier of goods or services. So, Mrs R made a claim to BPF.

In the course of Mrs R's complaint, she has been provided with an offer of compensation from BPF. Its offer was based upon a calculation to make the solar panels self-funding – essentially to pay the difference between the expected financial benefits, and the cost of servicing the loan over its 10-year term.

Overall, our investigator felt that the offer made by BPF was fair and reasonable and in line with what our Service would usually recommend in such complaints.

Mrs R didn't accept the offer. Represented by a claims management company ("CMC") Mrs R says that she was also promised free electricity and had thought the loan was for a 5-year term rather the 10-years it was taken over. The CMC explained the loan term has run into Mrs R's retirement and she wants the solar panels removed.

The investigator wasn't persuaded to change her mind but forwarded a refreshed offer from BPF to bring the amounts up to date as at January 2021. The CMC also provided a copy of sale literature produced by My Planet which referred to 'free electricity'.

As no agreement could be reached, the complaint has now been passed to me to review everything afresh and 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.

Having considered everything, I've reached broadly the same conclusion as the investigator – and I'll explain why.

For there to be a valid claim under s.75, an appropriate debtor-creditor-supplier relationship must exist. I'm satisfied that exists here, and as BPF has accepted the claim and made an offer to Mrs R I won't expand further. So, the key issue for me to decide is whether the offer made by BPF to resolve Mrs R's claim is fair and reasonable.

Self-funding offer

Mrs R says she believed the solar panel system benefits would cover the cost of servicing the loan with BPF and effectively make the system 'self-funding'.

In the course of our Service dealing with the complaint Mrs R provided copies of her FIT statements which enabled BPF to calculate the loss it says she suffered. That calculation is based upon the likely energy savings and FIT income Mrs R would receive over the loan term, compared to the cost of the loan. The approach taken by BPF to calculate the loss was in line with what our Service would direct in similar complaints.

It's my understanding that the last offer BPF made to pay compensation to Mrs R was calculated and made in January 2021. Its offer was to include compensatory interest of 8% simple per year to be added at the date of settlement.

Mrs R has previously been provided with BPF's offer calculation and so I haven't included it again in this decision. I'm satisfied the approach to the offer it has made is fair and reasonable and puts Mrs R in the position she would have been in had the system performed as was represented by My Planet.

Loan term

I appreciate that Mrs R has explained she understood the loan term to finance the purchase of the solar panel system was only 5-years rather than 10-years.

I recognise the salesperson would have provided a lot of information, but I consider the details of the loan would have been a central part of the transaction. I note there was an incentive for My Planet get Mrs R to agree to the loan in order to sell the system, and whilst I appreciate her recollection of being told it was a 5-year term, I've seen no other evidence to support that.

On balance, I'm persuaded Mrs R ought to have known the loan was being taken over a 10-year term. She would have been required to sign a fixed sum loan agreement setting out the details of the loan – including the term, the amount being borrowed, and the monthly payment amount. Given the monthly payment amount to service the loan, I think it ought to have been clear that the term would be more than 5 years – otherwise the principal loan amount wouldn't have been repaid.

I understand the loan term is particularly relevant as it would run into Mrs R's retirement and has the potential to cause affordability issues at a time when her income is reduced. However, I also note the system was always intended to be self-funding and the benefits would mean the solar panels would cover the cost of the loan. Although that never happened in practice, the offer made by BPF puts that issue right and so I'm satisfied that affordability issues are no longer a concern.

Free electricity

One of the main reasons that Mrs R has given for not accepting BPF's offer is that she was expecting 'free' electricity. In support of that point the CMC has provided a copy of the My Planet sales literature which set out:

"Generating your own electricity means that you are no longer faced with the uncertainty of rising costs from energy suppliers. It gives you a real element of control and is a great step towards self-sufficiency."

Whilst the brochure doesn't specifically state that electricity will be free, I accept it largely suggests that. But I'm also conscious the literature is aimed primarily at the overall benefits of the system when being purchased. If a customer had bought the system outright from their own funds, all the electricity generated would 'free', but having taken a loan to purchase the solar panels, Mrs R created a cost to be serviced.

So overall, I'm not persuaded there was a misrepresentation in relation to the system generating free electricity. And once the loan has been settled, the panels will continue to generate electricity and benefits which will essentially be 'free'. So, I don't consider it would be fair and reasonable of me to ask BPF to do anything further in this regard.

Summary

As explained above, I'm satisfied the offer BPF has made to Mrs R is fair and reasonable – but it will need to refresh its calculation to the date of settlement if Mrs R accepts this decision. Although I appreciate Mrs R would like the system to be uninstalled, I don't feel that's proportionate to what's required to put things right.

I realise Mrs R may be disappointed with my conclusions about some of the concerns she's raised, but I must assure her that I've considered everything impartially, afresh and in full.

My final decision

My final decision is that I uphold Mrs R's complaint against Clydesdale Financial Services Limited (trading as Barclays Partner Finance) – but I'm satisfied the offer it has already made is a fair and reasonable way of putting things right.

I leave it up to Mrs R to decide whether to accept the offer – and if she does, BPF will need to refresh the amounts to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 25 April 2022.

Ross Hammond
Ombudsman