

The complaint

Mr S complains that Barclays Bank UK PLC, trading as Barclaycard, rejected his claim against it under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to his purchase of a solar panel hot water system.

Mr S is represented by a claims management company ("the CMC").

Background

Mr S bought a solar panel hot water system for his home in April 2015, at a cost of £6,995. He paid the deposit with his Barclaycard credit card, and so Barclaycard is liable for any breach of contract or misrepresentation by the installer of the system under the Act.

Mr S already had some solar panels at his home, which had been installed by a different supplier. The new hot water system, which included new solar panels, was intended to provide him with free hot water for ordinary domestic use. Mr S says he asked the installer whether his existing solar panels could be adapted for this purpose, instead of buying a whole new system. He says the installer told him that this was not possible, and that the only way was to install the new system alongside the old. Mr S subsequently learned that this was not true, and that the same purpose could have been achieved much more cheaply – for less than £500 – by linking his original solar panels to his immersion heater. He says he would never have bought the new system but for the installer's claim. In November 2018 he raised a claim with Barclaycard for misrepresentation.

Barclaycard did not uphold Mr S's claim. It said that it had been his choice to buy the system, and he had got what he had paid for. It said it could not consider a salesman's promises or representations which had been made verbally where this was not supported by anything in writing. So Mr S brought this complaint to our service.

Mr S's complaint was considered by one of our investigators, but he did not uphold it. In summary, he did not think that what the salesman had allegedly said amounted to a misrepresentation about the product he was selling. The CMC did not agree, so the case was referred for an ombudsman's decision.

I wrote a provisional decision which read as follows.

What I've provisionally 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 noted that several points have been made by both parties in this case, but I consider that the main thrust of this complaint is about an allegation that a misrepresentation was made by the supplier of the system, which induced Mr S to buy it. I have taken the other matters into account, but my decision has focused on that central issue, as that is the most relevant to the outcome of this complaint.

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 him loss.

A misrepresentation does not necessarily have to be a statement about the characteristics or the performance of the product itself (although it often will be). It can also be a statement about something else, as long as it fulfils the definition above. In this case, what is alleged is a misrepresentation about whether Mr S really needed the product, given that he already had solar panels installed on his roof, and had brought these to the salesman's attention and specifically asked whether they could be used instead. I am satisfied that if this is what was discussed, and the salesman said the existing system could not be used, and if this answer was wrong, and if Mr S relied on what he was told and as a result he entered into a contract which he would not have entered into otherwise, then this would be a misrepresentation.

Since there is no written record of what was discussed, I can only assess the reliability of Mr S's account of the conversation by drawing common sense inferences about what he says happened and the context in which that conversation occurred. I do not have to accept that Mr S's account is accurate just because it is the only account provided to me about what was said, but nor do I have to entirely discount it just because it is one man's recollection of a verbal exchange.

On the balance of probabilities, I do think that Mr S's description of the sales meeting is a plausible one. I think it is a perfectly natural and obvious question to ask a solar panels salesman, when one already has solar panels, whether it is absolutely necessary to install additional solar panels in order to have free hot water, or whether the same object might be achieved by making use of the existing panels. Indeed, when I try to envisage Mr S *not* asking that question, I struggle to make sense of how he could not. It would certainly be an astonishing oversight. So I do not accept that the matter was not even discussed.

Having been asked that question, the only possible answers the salesman could give were "yes," "no," or "I don't know." If he said he didn't know, then it does not seem to me likely that Mr S would still have agreed to spend nearly £7,000 without bothering to find out if he really needed to or not. I think the salesman would have thought so too.

If the salesman had answered no – it is not necessary to buy and install new panels, we can just use the panels that are already there – then it is likely that Mr S would not have bought new panels he didn't need. He would instead have chosen to make full use of his existing panels' potential.

If the salesman had answered yes – only by buying new panels can you obtain free hot water, the old panels will not do – then that seems to me to be the only realistic scenario in which Mr S would have agreed to buy them. I think Mr S was reasonably entitled to rely on what he was told, since the old panels were clearly visible from the ground for the salesman to see for himself. So I accept that this is what happened.

I have seen evidence from an independent expert explaining why this was not the only solution, and that a much cheaper alternative, using the existing panels, would have been available, and would have been an obvious option to a solar panels engineer. (The salesman in 2015 might not have been an engineer, but in that case he should not have claimed to know the answer.) Barclaycard has challenged the provenance of that evidence, since it is in an email and not in a letter on headed paper, but it does appear to have come from an authentic company. I am willing to investigate this further before I issue a final decision, but due to the age of this complaint I have not wanted to delay issuing this provisional decision in order to do that first.

I do not think that rescission is the solution here. It would be expensive and impractical to remove the entire hot water system. So instead, I am currently minded to say that Mr S may keep the system, and instead Barclaycard should pay him the difference between its cost (£6,995) and the cost of a reasonable alternative. The CMC has provided evidence that an alternative was available for £375, but that does not necessarily mean that Mr S would have bought this in 2015, if he had known about it. He might have been offered, and accepted, a more expensive version, and also prices may have come down over the years as the technology has improved. His expert said (in 2019) that the alternative would have cost around £500, and I prefer that figure. The difference is therefore £6,495. I would normally add interest to compensation at the rate of eight per cent a year simple. So I will do that unless Barclaycard persuades me that I should not.

The expert also identified some minor remedial work that ought to be carried out on the hot water system. This seems to be the result of a shoddy installation, for which Barclaycard would also be liable under section 75. I am minded to say that this work should be carried out at no cost to Mr S.

My provisional decision

My provisional decision is that I currently intend to uphold this complaint. Subject to any further representations I receive from the parties by the deadline below, I intend to order Barclays Bank UK PLC, trading as Barclaycard, to:

- Pay Mr S £6,495, with interest on that sum at 8% simple a year from 15 April 2015 to the date of settlement, and
- Pay for the remedial work recommended by the expert. (I invite submissions from the parties about who should be responsible for arranging this work.)

I now invite the CMC and Barclaycard to let me have any further comments by 23 May 2022, after which I will issue my final decision.

Responses to my provisional decision

Neither party responded to my provisional findings, so there is no reason for me to depart from them, and I confirm them here.

My final decision

My decision is that I uphold this complaint. I order Barclays Bank UK PLC, trading as Barclaycard, to:

- Pay Mr S £6,495, with interest on that sum at 8% simple a year from 15 April 2015 to the date of settlement, and
- Pay for the remedial work recommended by the expert, once Mr S has arranged for this to be carried out and has provided Barclaycard with the invoice for the work.

Barclays Bank UK PLC must pay for the remedial work within 28 days of the date on which Mr S provides the invoice. If it pays later than this, then it must also pay simple interest on that part of the compensation at 8 percent a year from that date to the date of payment.

If Barclaycard considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate. (Mr S should refer back to Barclaycard if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 June 2022.

Richard Wood
Ombudsman