

The complaint

Mr E is unhappy with the offer made by Clydesdale Financial Services Limited trading as Barclays Partner Finance ('BPF') to settle his claim under Section 75 of the Consumer Credit Act 1974 (the 'Act') for some mis-sold solar panels.

What happened

The parties are familiar with the background to this claim, so I don't intend to set it out here in detail. In summary, Mr E bought a solar panel system from a supplier that I'll call 'M'. The system cost £10,750, which Mr E paid partly in cash and the rest through an £8,600, three-year, fixed term loan from BPF.

Mr E is represented by a claims management company ('CMC'). It has told us Mr E was led to believe the panels would be self-funding. But Mr E hasn't received the income that he expected and so thinks that the benefits of the panels were misrepresented to him.

BPF considered Mr E's claim and accepted that the benefits of the panels were more likely than not misrepresented by M. That's because M has been found to have made misrepresentations in sales to many other customers. It has also been found to be in breach of the relevant code of conduct by its industry body and has since gone out of business.

BPF said to Mr E that it would compensate him for those misrepresentations if he had suffered a loss. That compensation would be to make the panels self-funding over a 10-year period, with any overpayments that he'd made to be refunded with interest. But BPF calculated that Mr E hadn't suffered a loss. It thought that the benefits of the panels to him over that 10-year period were over £11,000, being more than he'd paid for them. So, as he hadn't lost out, it didn't initially make a settlement offer.

Since the complaint has been with us, BPF realised that its figures were wrong and the benefit to Mr E over the 10-year period was actually around £7,650. So, he had suffered a loss. BPF offered to pay him around £4,300 as compensation. But Mr E didn't accept this. The CMC has told us that it thinks the benefits of the panels should be calculated over three years (the term of the loan) and not ten.

Our investigator thought the settlement offer, using a 10-year calculation, amounted to fair compensation. She said that there was insufficient evidence to show that Mr E had been told the panels would pay for themselves over three years. And that using a 10-year period was fair and reasonable, as this was a more realistic period for the panels to have been self-funding.

The CMC didn't agree and requested an ombudsman's decision. So, the matter has come to me.

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'm sorry to disappoint Mr E but I too think that the compensation offered by BPF is fair and reasonable in all the circumstances of this complaint. I'll explain why.

Both the CMC and BPF are familiar with our approach to dealing with solar panel complaints. So, I won't set that out again here. Suffice to say, I've found that there was more likely than not a misrepresentation made by M to Mr E. Under Sections 56 and 75 of the Act, BPF must take responsibility for any misrepresentations. And it has agreed to offer compensation here.

So, what remains for me to do is to determine what fair compensation is in Mr E's case. I appreciate that the CMC considers that the term of the loan is the period over which the self-funding benefits should be calculated. But I don't agree. When determining compensation, we don't look to make a misrepresentation true. But we do look to ensure that the customer isn't disadvantaged by any representations made.

In Mr E's case, we haven't been provided with any sales documentation setting out the benefits that he was told he might receive. We have his statement that he was told in 2014 that the panels would be self-funding. But that's all there is in terms of evidence.

The CMC thinks that it would be fair for me to require that BPF follow an approach that we often adopt, of making the panels self-funding over the term of the loan – here three years. But we don't have a one size fits all approach to compensation in complaints like Mr E's. In a lot of complaints that we see, the interest and charges on a loan are payable over an extended period. We often see loans of 10 to 15 years, where the interest is almost as much again as the original amount borrowed. In Mr E's case, unusually, he was not paying any interest at all. The rate on his loan was 0%. So, Mr E just needed to repay the amount he originally borrowed - £8,600.

We also often see evidence that the customer was told that the panels would provide a higher benefit than they in fact go on to produce. But Mr E hasn't provided any supporting evidence of what he was told. So, I have had to assess what he was more likely than not told by M at the time.

Here, Mr E was getting the panels through an interest free loan. So, the length of that loan was in effect secondary to the overall cost of the panels. Mr E was paying no more for the loan than he might have paid if he'd bought the panels outright in cash. Mr E paid a significant lump sum of £2,150 to M when the panels were fitted and then continued to pay around £239 a month for the next three years.

Having assessed the limited evidence available, I've found that Mr E was most probably told that the panels would pay for themselves over several years – and that was more likely than not nearer to ten than three. Three years would be a very fast payback time for solar panels. And I can't see how M's salesman could ever have justified that on the facts of this case. The panels would have had to produce over £3,500 a year for that to have been true. And that's just so outrageous that Mr E would never have been likely to believe it.

I expect that Mr E would have been given a sales presentation and no doubt was told that the panels provide a long-term investment – with generation often continuing for at least 25 years. And Feed-in-Tariff (FIT) and Export payments for 20 years. Mr E would appear to have had a sufficient income to afford to pay for the panels over a three-year period. And I'm not surprised that he took the benefit of the loan, as it was of course interest free. Why pay now for what you can pay later at no additional cost?

BPF has used a 10-year period to calculate the benefits of the panels to Mr E. That includes the FIT and export payments of about £500 odd that he gets each year and electricity savings of around £200. Over a 10-year period, BPF says that those benefits will be around £7650.

I've looked at BPF's calculations and the assumptions used. And I think these fairly represent the benefit that Mr E is likely to receive. I think that 10 years is a reasonable period for BPF to have used in Mr E's case. As I said above, solar panels are long-term investments and those complaints we see often have pay back periods of about that length of time or more. This of course doesn't mean that 10 years is fair in every case. But on the limited evidence available in Mr E's complaint, I do think this is the length of time over which he was more likely than not to find the panels would fund themselves.

As it's now clear that the panels won't pay for themselves over that 10-year term, BPF's offer to compensate Mr E by restructuring the loan account so that he pays no more than the benefits over that period is, I think, fair. In that way, he's not disadvantaged by the misrepresentations.

It would be disproportionate for me to require that BPF remove the panels and pay Mr E back all his money. The panels appear to be working well. And last year produced more energy than was predicted in the MCS certificate – 2888 kWh against a prediction of 2750 kWh. So, they should continue to produce benefits for Mr E for many years to come. Once the compensation has been paid, as Mr E repaid the loan some years back, he will continue to profit from what will probably have turned out to be quite a wise investment. That'll likely be even more so in the future, given the ever-increasing cost of energy. So, the compensation offered by BPF fairly compensates Mr E for the disadvantage the misrepresentations have caused him.

My final decision

Clydesdale Financial Services Limited trading as Barclays Partner Finance have made an offer to settle this complaint which I consider to be fair and reasonable compensation in all the circumstances. I require that it:

- Allows Mr E to keep the solar panel system;
- Restructures Mr E's loan to make it self-funding over a 10-year period, calculating the benefits to him over that time using the bills and FIT statements available and the standard assumptions agreed with this service, so that Mr E pays no more than that for the system; and
- Refund Mr E any overpayments that he's made for the solar panel system and add simple interest to those overpayments at the rate of 8%* a year from when he made those payments until they're refunded.

*HM Revenue & Customs may require BPF to deduct income tax from any interest that it pays. Should Mr E request it, BPF must provide him with a statement setting out how much tax has been taken off so that he may reclaim it if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 3 May 2022.

James Kennard
Ombudsman