

The complaint

Mr R has complained that Clydesdale Financial Services Limited trading as Barclays Partner Finance's offer of settlement for his claim against it under Section 75 of the Consumer Credit Act 1974 is insufficient.

What happened

Mr R bought solar panels for his home in 2013. The purchase was funded by a loan from Clydesdale, and that business is therefore liable for the acts and omissions of the installer under the relevant legislation. In this case, that relates to the installer misleading Mr R into believing that the panels would be self-funding, which they weren't.

Clydesdale accepted there had been a misrepresentation and made an offer of settlement that, in effect, would make the solar panels self-funding over the ten-year term of the loan.

Mr R was dissatisfied with this offer because he felt Clydesdale had overestimated the benefit of the solar panels and so the offer was insufficient.

Our adjudicator felt the offer was fair and reasonable. Because a resolution couldn't be agreed the complaint has been passed to an ombudsman.

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.

Clydesdale is familiar with all the rules, regulations, and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach. So, I don't consider it necessary to set all of that out in this decision.

Clydesdale has accepted there was a misrepresentation so I just need to decide what Clydesdale must do to put things right. I have set this out below.

I've taken on board Mr R's comments. He says his Feed-In Tariff (FIT) income was only £4,116.30 by the end of the seventh year and would be £5,839.80 by the end of the ten years. Whereas Clydesdale has calculated the ten-year benefit of the solar panels to be £7,625.28.

However, I can see that, in line with our approach to redress in cases like this, Clydesdale has calculated the benefit of the solar panels to include not just the FIT payments but also the electricity savings from using some of the electricity generated rather than buying it from the electricity grid. So, I think Clydesdale's approach to calculating this is fair and reasonable.

However, because a decision is required in this case, I set out below what Clydesdale must do to put things right. It should recalculate its offer in line with this.

Putting things right

Clydesdale should put things right by recalculating the original loan based on the known and assumed savings and income to Mr R from the solar panels over a ten-year period so Mr R pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

In the event the calculation shows that Mr R is paying (or has paid) more than he should have, then Clydesdale needs to reimburse him accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr R by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require Clydesdale to restructure Mr R's loan. It should recalculate the loan to put Mr R in a position where the solar panel system is cost neutral over a ten-year period.

Normally, by recalculating the loan this way, a consumer's monthly repayments would reduce, meaning that they would've paid more each month than they should've done resulting in an overpayment balance. And as a consumer would have been deprived of the monthly overpayment, I would expect a business to add 8% simple interest from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr R have the following options as to how he would like his overpayments to be used:

- A. the overpayments are used to reduce the outstanding balance of the loan and he continues to make his current monthly payment resulting in the loan finishing early,
- B. the overpayments are used to reduce the outstanding balance of the loan and he pays a new monthly payment until the end of the loan term,
- C. the overpayments are returned to Mr R and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr R and he pays a new monthly payment until the end of the loan term.

If Mr R accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

If Mr R has settled the loan, Clydesdale should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mr R has settled the loan by refinancing, he should supply evidence of the refinance, to Clydesdale and Clydesdale should:

1. Refund the extra Mr R paid each month with the Clydesdale loan.
2. Add simple interest from the date of each payment until Mr R receives his refund.
3. Refund the extra Mr R paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr R receives his refund.
5. Pay Mr R the difference between the amount now owed and the amount he would've owed if the system had been self-funding over a ten-year period.

My final decision

For the reasons I've explained, I'm upholding Mr R's complaint. Clydesdale Financial Services Limited trading as Barclays Partner Finance should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 March 2022.

Phillip Lai-Fang
Ombudsman