

## **The complaint**

Miss M has complained that Clydesdale Financial Services Limited trading as Barclays Partner Finance rejected her claim against it under Section 75 of the Consumer Credit Act 1974.

## **What happened**

Miss M bought solar panels for her home in 2014. 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 Miss M into believing that the panels would be self-funding, which they weren't.

Clydesdale made an offer of settlement in April 2021. This would restructure the loan (reducing what is owed) so that what Miss M pays for the loan (£5,417.89) is no more than the benefit of the solar panels over ten years.

Having calculated how this would look, Clydesdale suggested that, given that Miss M says she is in financial difficulty and cannot make loan repayments and the original loan is in arrears, the redress be used to pay off the reduced loan balance (£3,150.49 at that time). This would mean the adjusted loan would be paid off in full and Miss M would owe nothing further. Clydesdale has confirmed that all adverse information about the loan would be removed from her credit file at credit reference agencies – so this loan having been in arrears would not affect her ability to get credit in future. This effectively makes the loan self-funding as she was promised at the time of sale.

The remainder of the redress (which was £4,127.74 as of April 2021 but will be more by the time it is paid) would be paid to Miss M. This would include £300 compensation in recognition of Clydesdale not having made the offer of settlement until about a year after it accepts that it could've done. Clydesdale confirmed it would recalculate the settlement at the time it is paid, so that the compensation for the time Miss M is without the overpayments she made is correct to the date of settlement.

Miss M's complaint was considered by one of our adjudicators. They thought that Clydesdale's offer of settlement was fair and reasonable.

Miss M did not accept this. She has pointed to a number of installation issues with the solar panels that caused damage to her property shortly after they were installed. She says she has been complaining to Clydesdale about this and that she thought the solar panels were mis-sold since 2015. She has also been caused problems by going into arrears and how Clydesdale has continued to pursue the outstanding debt, despite her having ongoing disputes with it about the solar panels. So, she doesn't think £300 compensation is sufficient recognition of the trouble and upset this whole episode has caused her.

Miss M also says she was misled at the time of sale into thinking she was taking a loan with Barclays Bank, and only realised she was dealing with Clydesdale after contacting the Financial Ombudsman Service. She also doesn't think that Clydesdale has accurately

calculated the benefits of the solar panels, bearing in mind the Feed-In Tariff (FIT) payments she's received, which are less than what she was promised.

Miss M is also unhappy that Clydesdale has based some of its offer on assumptions about the performance of the solar panels and the electricity savings this would generate.

As no agreement could be reached, I've been asked to make a decision on this complaint.

### **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.

#### Relevant considerations

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In this case the relevant law includes section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Miss M paid for the system with a fixed sum loan agreement, Clydesdale agrees that section 75 applies to this transaction. This means that Miss M could claim against Clydesdale, the creditor, for any misrepresentation or breach of contract by P in the same way she could have claimed against the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Section 56 is also relevant. This is because it says that any negotiations between Miss M and the supplier are deemed to have been conducted by the supplier as an agent of Clydesdale.

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 them loss. This could more commonly be referred to as the solar panels being mis-sold – which is how Miss M has phrased it.

#### Clydesdale's offer

Clydesdale has made an offer of settlement, implicitly accepting that the supplier of the solar panels misrepresented their benefits. So, I don't need to decide whether there was a misrepresentation, as everyone accepts there was. In Miss M's words, the solar panels were mis-sold to her. As such, what I must decide is what Clydesdale must do to put this right.

I set out below what I would expect Clydesdale to do in this situation.

- Recalculate the original loan based on the known (where evidence is provided) and assumed (for future dates and in the past if there is no evidence of actual savings and income) savings and income to Miss M from the solar panels over a ten-year period so she pays no more than that, and she keeps the solar panel system, and any future benefits once the loan has ended. \*
- Because the calculation shows that Miss M has paid more than she should have, then Clydesdale needs to reimburse her.

- Because the loan is ongoing, Clydesdale should restructure Miss M's loan to put Miss M in a position where the solar panel system is cost neutral over a ten-year period.
- By recalculating the loan this way, Miss M's contractual monthly repayments would reduce, meaning that she's paid more each month than she should have, resulting in an overpayment balance. Because Miss M would have been deprived of those overpayments, I would expect a business to add 8% simple interest from the date of each overpayment to the date of settlement.
- Because Miss M is in arrears and financial difficulties, I think it is fair for the overpayments to be used to reduce the outstanding balance of the adjusted loan, which means she will owe nothing further.
- Repay Miss M any overpayment balance that is left over once the outstanding balance of the adjusted loan is paid off.
- Pay Miss M an amount to recognise the trouble and upset caused by Clydesdale not making an offer of settlement within a reasonable time.

\* Known savings and income should be used where evidence of this is available (generally in the form of FIT statements showing the electricity generated and electricity bills showing the unit rates Miss M was paying for electricity from the grid). Assumptions can be made where such evidence is not available and for future dates. Assumptions will need to be made in relation to Miss M's self-consumption rate (the proportion of the generated electricity that she uses herself), Retail Prices Inflation rates (as FIT unit rates increase by this amount each year) and energy inflation (to calculate how electricity prices are expected to change in future).

I'm satisfied that Clydesdale's offer of settlement is in line with what I would expect in this case. Albeit that Clydesdale must check, when finalising the settlement, that it has used actual figures for electricity generation, FIT and electricity unit rates where these are known. And has made reasonable assumptions where it needs to.

#### Miss M's comments

In this case I'm satisfied that Clydesdale's offer of £300 compensation for the trouble and upset caused is fair and reasonable. This is only in relation to the delay in it making an offer of settlement in relation to the misrepresentation that occurred. Not in relation to the installation issues and how long that took to get sorted. Those matters are being considered as part of a separate complaint at the Financial Ombudsman Service, which will also consider any trouble and upset caused by those matters. Matters relating to how the arrears and outstanding debt were pursued can also be looked at as a separate complaint if Miss M wishes for that to happen.

I know that Miss M thinks Clydesdale could've dealt with this complaint about the misrepresentation of the solar panels much sooner. But overall, I think the compensation offered here is fair, given what has happened.

Clydesdale Financial Services Limited loaned money to Miss M under its trading name of Barclays Partner Finance. This is clearly shown on the pre-contract credit information provided to Miss M before she entered into the loan agreement. Given that Clydesdale Financial Services Limited is part of the Barclays group of companies, I do not think Miss M was misled in relation to what company she was dealing with.

Miss M is unhappy about some assumptions being used to calculate the settlement. To be clear, I expect Clydesdale to use actual figures (such as for electricity generation from the solar panels, FIT and electricity unit rates) where these are available. For periods where this

isn't available, and for future dates, and for things like Miss Ms self-consumption rate, Clydesdale must use assumptions. From what I have seen of how Clydesdale does this, I think its approach is reasonable.

Miss M queried how the recent increase in electricity prices will affect the benefit she receives from the solar panels. I'd like to reassure her that the higher electricity prices are, the greater the savings she will get from using the electricity generated by her solar panels. For each unit of electricity that Miss M uses from her solar panels, that is one less unit of electricity that she has to pay for from her electricity supplier.

### **Putting things right**

Clydesdale should put things right as set out below:

- Recalculate the original loan based on the known (where evidence is provided) and assumed (for future dates and in the past where there is no evidence) savings and income to Miss M from the solar panels over a ten-year period so she pays no more than that, and she keeps the solar panel system, and any future benefits once the loan has ended.
- Where the calculation shows that Miss M has paid more than she should have, then Clydesdale needs to reimburse her.
- Because the loan is ongoing, Clydesdale should restructure Miss M's loan to put Miss M in a position where the solar panel system is cost neutral over a ten-year period.
- By recalculating the loan this way, Miss M's contractual monthly repayments reduce, meaning that she's paid more each month than she should have, resulting in an overpayment balance. Because Miss M would have been deprived of those overpayments, Clydesdale should add 8% simple interest from the date of each overpayment to the date of settlement.
- The overpayments refund due should be used to reduce the outstanding balance of the loan in the first instance. This means the adjusted loan will be paid off in full and Miss M will owe nothing further.
- Repay Miss M any overpayment balance that is left over.
- Remove any adverse information about this loan from Credit Reference Agency records.
- Pay Miss M £300 to recognise the trouble and upset caused by Clydesdale not making an offer of settlement within a reasonable time.

### **My final decision**

For the reasons I've explained, I'm upholding Miss M'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 Miss M to accept or reject my decision before 11 May 2022.

Phillip Lai-Fang  
**Ombudsman**