

The complaint

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

What happened

Mr C bought solar panels for his home in 2015. The purchase was initially 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 C into believing that the panels would be more beneficial than they would be. He says this was especially the case in regards to the value of the savings he would make from using some of the electricity generated.

Initially Clydesdale responded to say it was not upholding the complaint. After the complaint was referred to us, Clydesdale reconsidered the matter and upheld the complaint. However, once it calculated redress, in line with our usual approach, it found that Mr C's solar panels would generate a benefit – in energy savings and feed-in tariff (FIT) payments – over ten years that was more than he'd actually paid for the loan (which Mr C had paid off after just a few months, meaning he paid much less interest than if the loan had run its full term). So, Clydesdale said there was no refund due to him, but offered £100 compensation in recognition of the inconvenience caused by it not initially upholding the complaint.

Mr C's complaint was considered by one of our adjudicators. They thought that the offer Clydesdale had made was fair.

Mr C disagreed. He says he agreed to buy the solar panels as they were sold to him as an investment that would generate a significant benefit over 25 years. He says that if he'd been given the correct information about the benefits of the solar panels he wouldn't have invested in them and could've used the money for other, more beneficial, investments. So, Mr C thinks he should receive significant additional redress to reflect the anticipated investment returns that he's missed out on.

I issued a provisional decision explaining that I was not planning to uphold this complaint and explaining my reasons. Mr C disagreed. Clydesdale made no further comment.

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. I'm satisfied that it has followed this in upholding the complaint and calculating potential redress, including its offer of £100 compensation. I have carefully considered Mr C's comments about investment loss and the additional evidence he has provided to us. Having done this, I have decided not to award any additional compensation. I will explain my reasons.

When upholding a complaint like this, in looking to put things right we do not seek to make the misrepresentation true. So, in this case we would not tell Clydesdale to pay Mr C the shortfall between the savings and income he will likely make and the savings and income he thought he would make. Rather we seek to, as far as reasonably possible, put the consumer in the position he would've been in had the misrepresentation not taken place.

Where we think a consumer would not have bought a product, this would normally involve cancelling the loan and refunding any payments made, plus compensatory interest for the time the consumer was without that money. The product would have to be returned (or handed over to the lender) so the consumer would no longer have it.

But in the case of solar panels this does not seem appropriate. Removing them has a significant additional cost to the lender, and means the consumer misses out on the benefits of having them. And the societal benefits of a renewable power source is lost. So, we think a fairer outcome is one where:

- The solar panels remain in place
- They do not cost the consumer more than the benefit they can expect to receive over a ten-year period.
- The consumer keeps the ongoing benefits of the solar panels beyond that time.

This approach means that the solar panels will effectively pay for themselves after ten years, leaving at least ten years when the consumer will benefit from having them through FIT payments (which are paid for a total of 20 years), and potentially even longer from energy savings.

My provisional findings

In this case, Clydesdale has calculated that the benefit to Mr C over ten years is likely to be slightly more than the total he paid for them. Because Mr C paid off the loan early and therefore saved on interest, that has limited the overall cost to him. But this means that, under our usual approach he would receive no refund. However, Clydesdale has offered £100 compensation in recognition of the inconvenience caused by it not upholding the complaint initially. Again, that is in line with our usual approach.

Mr C has suggested this is not a fair outcome in this case, because he could've used the money spent on the solar panels loan for other things. So, I've thought about where that money came from and what Mr C did with other funds he had available at that time, to inform my decision on whether or not to award additional compensation. Having done so, I've decided not to make a further award.

In July 2015, Mr C sold an investment property. This left him with a significant amount of money available to him. Mr C says he used the money received from the sale to do three things:

1. Pay off the solar panel loan.
2. Pay off other personal debts (such as on credit cards).
3. Pay for a holiday.

Mr C has suggested that if he had not paid off the solar panel loan he could have invested the money elsewhere – either in another investment property or certain Exchange Traded Funds (ETF's) which have since achieved significant capital growth. Mr C has asked that he be compensated for the loss of investment growth that he says he could've achieved.

I'm mindful that Mr C's main complaint was that the energy savings were significantly inflated because they were calculated using an electricity unit price that was far in excess of what he was paying at the time. That suggests the main benefit Mr C was attracted to was how much he would save on his electricity bills rather than the income he would receive from the FIT payments. And Mr C has confirmed that he *"went for the solar panels in the end because the reward was tangible, immediate and felt like we were making an environmental change which we had control of."* So, I think that Mr C was attracted to the solar panels for more than simply the financial benefit.

I'm also mindful of the fact that Mr C chose to use a loan at the outset – which meant he was agreeing to pay more than the "cash price" of the solar panels. As an investment, the most beneficial way to pay for the solar panels would've been to pay the "cash price" up front and incur no interest. That way, Mr C would've maximised his returns because he would've minimised his overall outgoings – albeit at the expense of an up-front cost that he'd recoup over time.

That Mr C didn't do this suggests to me that he didn't have this amount of money easily available at that time. That conclusion is supported by Mr C's explanation of where the money came from to pay off the loan – which was from the sale of a property four months after installation of the solar panels. Mr C paid off the solar panel loan a week after the sale proceeds were paid into his account, at the same time as paying off a number of other debts.

So, in summary, the money used to pay off the solar panels loan appears to have been tied up in a property investment at the time the solar panels were sold. So, Mr C couldn't have paid for the solar panels up front using that money. And if he did have other funds available at that time he chose not to use them.

Looking at the timing of the sale of the property, and the overall value of the other debts Mr C paid off with the proceeds of the sale, I cannot exclude the possibility that Mr C always intended to use that money to pay off his debts – rather than to invest elsewhere.

There is nothing to confirm that Mr C had a track record of investing in ETF's before buying the solar panels or afterwards. While Mr C had a property investment in 2015, and in 2018 set up a company through which to make property investments, the proceeds of the property sale in 2015 were used to pay off a significant amount of debts and take a holiday – rather than to make further investments.

Overall, I don't think the evidence available to me is sufficient for me to reasonably conclude that Mr C would've been likely to make a specific type of investment that would've put him in a better position than he is in now. That being the case, I don't think it would be fair and reasonable to make a further award of compensation on the basis that Mr C would've made such an investment.

In summary, I provisionally decided that:

- While the solar panels were misrepresented to Mr C, by paying off the loan early he avoided the losses he would otherwise have suffered had the loan ran to its full term.
- As a result, the benefits of the solar panels over ten years are likely to exceed the total amount Mr C paid for them (even before factoring in the recent increase in energy costs).
- Mr C will benefit after the tenth year through another ten years of FIT payments (the unit rate of which increases with inflation) and probably longer through savings on his electricity bill from using some of the electricity generated.

- Clydesdale has offered £100 compensation in recognition of the inconvenience caused by it not initially upholding the complaint and I think this is fair and reasonable in the circumstances.
- I'm not persuaded that Mr C has or will suffer further losses through missed investment opportunities.

So, while I provisionally upheld this complaint, I wasn't planning to direct Clydesdale to do more than it has already offered to do.

Mr C's additional comments

Mr C replied to say he welcomed me upholding the complaint but disagreed with the proposed redress. In summary, he said:

- The expected savings calculated by the seller (using vastly inflated unit costs) was £299.98 (1666kwh at 18p per kWh).
- The actual savings using actual unit rate at the time of sale was £129.12 (1666kwh at 7.75p per kWh).
- He is receiving £170.86 less per year than he was told he would.
- Over 25 years that's £4271.50 before inflation and £6,229 with inflation at 3%.
- He didn't invest to get money back over 10 years but invested for a return over 25 years.
- He took out a loan as a pseudo insurance policy against the selling company being liquidated. It was always his intention to pay off the loan early.
- The FIT tariff was changing at the end of the month, so he had the panels fitted before that change and took the loan as protection.
- FIT payments do not form part of his complaint which is about inflating and exaggerating the savings from energy bills.
- He disagrees with my approach to compensation. He feels that the return through savings will be over £6000 less he was promised, so he would like to be compensated for this loss.
- If the only way to redress that situation is for Clydesdale to remove the panels and compensate then that is what should happen.

My further findings

I have considered Mr C's additional comments, but I am not persuaded to change my decision.

Mr C is asking me to compensate him for a perceived loss, between the electricity savings he was expecting based on what he was told at the time of sale, and what he thinks is likely over 25 years. He wants me to ignore the benefit provided by the FIT payments which will last for 20 years.

However, I am not persuaded that would be a fair and reasonable outcome in all circumstances of the complaint. I don't think the "system performance" in the sales contract can be taken to provide a guarantee of electricity savings over the 25-year lifetime of the solar panels. Nor do I think it claims to provide such a guarantee.

I would expect the sales contract to provide a reasonable estimate of the system performance in terms of the kWh of electricity the system will generate in the first year. That seems to have been the case, given the meter readings suggest the system has produced more electricity per year on average than was shown on the contract. Mr C has confirmed he is not complaining about the estimated FIT payments shown on the contract, only the

estimated electricity savings, which further suggests the system is generating the expected amount of electricity.

I don't think it is possible to accurately predict future electricity prices. And I'm mindful that the sales contract does not claim to do this – it only attempts to predict the first-year benefits of the system.

Mr C says the electricity savings figure in the contract is misleading, as this uses a unit price much higher than he was paying at the time. Mr C has provided evidence of the unit price he was paying roughly a year *after* the sale took place. So, I don't know the exact unit price he was paying at the time. I accept it was likely to have been considerably lower than shown on the contract. And although the contract suggests the unit price used for the electricity saving is an estimate, that may well have misled Mr C.

Accepting that this induced Mr C into entering into the contract, that means the system was mis-sold to Mr C (something of which there is no dispute in this complaint). But I don't think it would be appropriate to compensate Mr C based solely on the difference between the electricity savings he thought he would get at the time of sale, and what he now thinks he will get, while ignoring the additional benefits of the system and the uncertainty of future electricity prices.

While the unit price of the FIT payments initially set by when the system was registered for the FIT scheme, is linked to inflation and will continue for 20 years after installation, the savings depend on the unit price of electricity and will continue for as long as the solar panel system is functioning (this is generally expected to be 25 years or more). The savings realised will also depend on how much electricity is used at the property and when.

At the time of sale, it appears Mr C was paying much less for his electricity than was estimated in the sales contract. So, I accept the electricity savings he will have made in that first year (and probably for some years after) will have been less than expected.

However, over the past year or so the cost of electricity for consumers has increased significantly and is set to increase significantly again from April 2022. It is also projected to increase significantly again from October 2022. While such increases are unprecedented, they will have the effect of significantly increasing the benefits, through electricity savings, of Mr C's solar panel system. Overall, I'm satisfied that Mr C is likely to get a return on his investment through energy savings and that this will probably be much higher now than could've reasonably been predicted when Mr C agreed to buy the solar panels or when he made his complaint.

Having considered everything, I've decided, in line with my provisional decision, to uphold this complaint. But I will not direct Clydesdale to pay Mr C any more than the £100 it has already offered.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr C's complaint for Clydesdale to put things right by recalculating the original loan based on the known and assumed savings and income to Mr C from the solar panels over a ten-year period so he pays no more than that, and he keeps the solar panel system, and any future benefits, after that time.

Clydesdale has done this calculation and found that Mr C has paid less than the benefits over that period. So, Clydesdale does not need to make any payment to Mr C in respect of this. However, Clydesdale should share its calculations with Mr C if it hasn't already done so.

Nevertheless, I'm satisfied that there was sufficient information available at the time that Mr C first contacted Clydesdale that means the claim should have been upheld. So, I direct Clydesdale to pay Mr C £100 compensation for the trouble and upset caused (if it hasn't already done so).

My final decision

For the reasons I've explained, I'm upholding Mr C'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 C to accept or reject my decision before 6 April 2022.

Phillip Lai-Fang
Ombudsman