

The complaint

Mr L has complained that Santander UK Plc (“Santander”) rejected his claim against it under section 75 of the Consumer Credit Act 1974 in relation to his purchase of some solar panels.

Background

Mr L bought solar panels for his home in November 2018. He paid the deposit with a Santander credit card, and that bank 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 L into believing that the panels would be self-funding, which they weren't.

Mr L's complaint was considered by one of our investigators. She thought that the benefits of the panels were mis-represented to Mr L, and that fair redress would be for Santander to work out what the financial returns of the panels were likely to be over a reasonable period, which she thought was ten years from the date they were installed. This calculation was to be based on evidence of the actual performance of the panels, and on a number of assumptions on future performance, and on the assumption that Mr L would consume 37% of the electricity the panels generated. Santander should then pay him the difference between the amount so calculated and the cost of the panels, and pay him interest on that sum at 8% a year. She also said that Santander should pay Mr L £100 for his trouble.

Santander didn't respond by the deadline, so the case was referred for an ombudsman's decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Santander 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.

Having carefully considered everything provided, for the same reasons as those explained by the adjudicator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mr L was not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for him.

In coming to that conclusion, I have taken into account Santander's argument that if Mr L had taken more time to read the installer's contract thoroughly, he would have seen that it stated that the expected benefits from the panels were actually a much lower sum than he says the saleswoman had told him verbally during the sales meeting. Santander submitted that since buying solar panels is expensive and represents a considerable investment, consumers should take care to read all of the paperwork before signing, or at least during the 14-day cooling-off period prior to installation. I do not disagree with that view, but I have also taken into account the legal principle that where a misrepresentee is unaware that a

representation is false, the fact that he could have found out it was false by taking reasonable care is not a defence in law, and nor is it a reason to reduce his damages.¹ I accept what Mr L has told us about the meeting, and that he did not notice the page with the estimated benefits figures on it, and that he was misled by what the saleswoman told him.

Before I move on, I will also make two observations about how Santander dealt with Mr L's section 75 claim. Firstly, in a phone call between Santander and Mr L the call handler conceded that Mr L's account of the sales meeting and of what the saleswoman had told him was plausible. And secondly, the reason given for rejecting the claim was that the contract had said that the benefits expected from the panels were only estimates and were not guaranteed. But that was never the point. Mr L was not saying that the written figures were not accurate, he was saying that he had been told a completely different figure and the saleswoman had deliberately concealed the written figures from him by folding the contract over when she handed it to him to sign.

So I think that by rejecting Mr L's claim for compensation under section 75, Santander didn't treat him fairly and he lost out because of what Santander did wrong. And this means that it should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr L's complaint for Santander to put things right by calculating Mr L's likely benefits from the panels over the period of ten years from the date of installation (15 November 2018), taking into account his most recent FIT statement (which is enclosed with this decision), and assuming that he has consumed and will continue to consume 37% of the electricity generated by the panels. Santander must then pay Mr L the difference between the amount so calculated and the price of the panels (£8,350), together with simple interest at the rate of 8% a year. Santander should share its working out with him, so that he knows how the calculated figure was reached.

Mr L may keep the solar panel system, and any future benefits once the ten year term has ended.

I'm satisfied that there was sufficient information available at the time that Mr L first contacted Santander that means the claim should have been upheld. I direct that Santander must pay £100 compensation for the inconvenience caused.

My final decision

For the reasons I've explained, I'm upholding this complaint. I order Santander UK Plc to 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 L to accept or reject my decision before 20 May 2022.

Richard Wood
Ombudsman

¹ See *Chitty on Contracts* (34th edition), paragraphs 9-051 and 9-052, and the authorities cited there.