

Complaint

Mrs R has complained that Clydesdale Financial Services Limited trading as Barclays Partner Finance (“BPF”) didn’t agree to settle a claim against it under Section 75 of the Consumer Credit Act 1974, in the way she wanted it to.

Background

Mrs R bought solar panels for her home in 2014. The purchase was funded by a loan from BPF, 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 Mrs R that the potential benefits she’d receive from the solar panels would cover her monthly finance payments.

BPF made an offer to settle the complaint, taking account of the benefit the solar panels would likely provide over the term of Mrs R’s loan. BPF also offered Mrs R £300 compensation to help alleviate the financial difficulties she said she was experiencing. But Mrs R felt the offer did not fully compensate her for her losses as she has since moved houses and no longer receives any benefit. She wanted to rescind the contract in its entirety, so, she referred the matter to us.

Mrs R’s complaint was considered by one of our investigators. While he agreed the complaint should be upheld, he felt the offer made by BPF was fair and it didn’t need to do anything further. Mrs R didn’t agree, so the complaint has been passed to an ombudsman for a final decision.

In my provisional decision of 13 April 2022, I set out in detail why I felt the offer made by BPF to settle the complaint was fair. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Neither BPF nor Mrs R made any further submissions.

My findings

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

In my provisional decision I explained the following:

BPF 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.

BPF has already agreed to uphold the complaint so I don’t need to consider that part of Mrs R’s complaint as part of this decision. The only issue left for me to consider is whether the offer made by BPF to settle the complaint is fair.

Having carefully considered everything provided, currently, I agree with BPF’s offer of compensation, so I don’t think it needs to do anything more. I’ll explain why.

Our role is to resolve individual disputes between consumers and businesses fairly, reasonably, quickly and informally. Determining fair compensation is not always an exact science and it is all the more difficult in a case like this where solar panels have been installed at a property, which the consumer no longer resides at.

I've considered if it's fair to unwind the credit agreement, remove the solar panels and give Mrs R a refund of all the payments she's made (less any financial benefit gained from the installation of the solar panels). But I don't think this is fair. Mrs R says her installers are no longer trading so BPF would have to arrange to have this done at their expense. They'd also have to gain permission to access a third party's house and remove the solar panels, with the added complication that they may not agree (bearing in mind they likely purchased the property aware of the solar panels and this would've likely formed part of their consideration when negotiating the purchase price of the property). This may be disproportionate, impractical and potentially not feasible. And there is an alternative that will put Mrs R in a fair position.

I think that Mrs R purchased the panels on the basis that the finance payments would be covered by the benefit provided by the solar panels. So, I've carefully considered whether it would be fair to put Mrs R into the position she would have been in if the representations had been true and installation of the solar panels had been self-funding over the term of the loan agreement. That is not our normal approach where there has been a misrepresentation, as we'd normally try and put her in the position she'd be in if the misrepresentation had not taken place at all.

But in these types of cases, due to the reasons explained above, I think that it would be fair and reasonable in all the circumstances of Mrs R's complaint for BPF to put things right by recalculating the original loan based on the known and assumed savings and income from the solar panels over the 10- year term of the loan so she pays no more than that. This is the offer made by BPF and in line with what we normally suggest, and I think the offer made by BPF is fair.

House Move

Mrs R does not wish to accept this offer as she has moved houses before the end of the term of the loan, and is no longer in receipt of any benefit (either savings on her bills or payments from the Feed In Tariff scheme (FIT)). But she has continued to make payments under the loan agreement.

I appreciate that Mrs R moved houses and left her system behind on the old property so is no longer receiving any benefit. But I do not think it would be fair to ask BPF to calculate compensation by making allowance only for the actual returns Mrs R received whilst she resided at the property in question. Mrs R independently chose to move after the sale of the solar panel system and chose not to take the system with her. Therefore, she would have been aware, she would receive no further return from the system, but was still liable to make the loan payments. And even if the loan had been self-funding from the start, her position would be no different. So, I don't think it would be fair to ask BPF to take this into account in the circumstances.

I have carefully considered this point, but remain of the view that fair compensation would be to make the solar panel system self-funding over the 10-year term of the loan, despite the benefit from the solar panel system having been transferred to the new owners of the house. The purpose of this redress is to put right the misrepresentations made at the point of sale – which I think this redress method fairly achieves.

Financial Difficulties

I understand that Mrs R has suffered ongoing financial difficulties for a significant amount of time. BPF has said that payments have been maintained under its loan agreement but if Mrs R would like to discuss her circumstances with it, she is free to contact it. Additionally, as explained by our investigator, it has also offered a £300 goodwill compensation payment to her.

Overall, I think BPF has treated Mrs R sympathetically, as we would expect it to. If she requires any further assistance, she can contact it to discuss next steps.

BPF responded to my provisional decision but said it had no further points to make. Mrs R also responded and said she had no further submissions to make but she would like to accept option C as set out in the redress options below. In the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. With this in mind, I uphold this complaint and BPF should put things right as I've set out below.

I would add that Mrs R has recently advised that she's suffered the loss of her partner. I appreciate this is likely to be an extremely difficult period for her and I'm very sorry to hear this news. I understand Mrs R has said she'd like to accept option C, but if she'd now like to reconsider her options, she is able to do so and she should let us know if she'd still like to accept option C or if another option now better suits her needs.

I would add that as explained in my provisional decision, the obligation on BPF to treat its customers positively and sympathetically when they are experiencing financial difficulties is ongoing. If Mrs R struggles to maintain the new payments under the restructured loan, given her current difficult circumstances, she can get in touch with BPF to discuss what (if anything) it can do to help.

putting things right

Having thought about everything again, as offered by BPF, I think BPF should recalculate the original loan based on the known and assumed savings and income from the solar panels over the full 10 year term of the loan so she pays no more than that.

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

If the calculation shows there is a loss, then where the loan is ongoing, I require BPF to restructure Mrs R's loan. It should recalculate the loan to put Mrs R in a position where the solar panel system is cost neutral over the 10-year loan term.

Normally, by recalculating the loan this way, Mrs R's monthly repayments would reduce, meaning that she would've paid more each month than she 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 Mrs R have the following options as to how she would like her overpayments to be used:

- a) the overpayments are used to reduce the outstanding balance of the loan and she continues to make her current monthly payment resulting in the loan finishing early,
- b) the overpayments are used to reduce the outstanding balance of the loan and she

- pays a new monthly payment until the end of the loan term,
- c) the overpayments are returned to Mrs R and she continues to make her current monthly payment resulting in her loan finishing early, or
 - d) the overpayments are returned to Mrs R and she pays a new monthly payment until the end of the loan term.

If Mrs R accepts my decision, she should again indicate on the acceptance form which option she wishes to accept.

If Mrs R has since settled the loan, BPF should pay Mrs R the difference between what she paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mrs R has settled the loan by refinancing, Mrs R should supply evidence of the refinance to BPF, and BPF should:

1. Refund the extra Mrs R paid each month with the BPF loan.
2. Add simple interest from the date of each payment until Mrs R receives her refund.
3. Refund the extra Mrs R paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mrs R receives her refund
5. Pay Mrs R the difference between the amount now owed and the amount she would've owed if the system had been self-funding

The £300 offer made by BPF was a gesture of goodwill and I haven't seen any reason why it should be required to pay any more.

My final decision

For the reasons explained, I uphold this complaint and I direct Clydesdale Financial Services Limited trading as Barclays Partner Finance ("BPF") to pay Mrs R the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 27 May 2022.

Asma Begum
Ombudsman