

The complaint

Mr W has complained that The Co-operative Bank Plc (“Co-op”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr W bought a biomass boiler for his home in 2015 from a supplier. The purchase was part-funded by his credit card from Co-op, which is therefore liable for the acts and omissions of the supplier under Section 75.

In this case, that relates to the installer allegedly misleading Mr W into believing that the payments he would receive over seven years through the Renewable Heat Incentive (“RHI”) scheme would be about twice as much as they are – and significantly more than the cost of the biomass boiler. But the actual RHI payments may be slightly less than the cost of the biomass boiler. Mr W says he was attracted to the purchase because of the “profit” he would receive on top of the cost. He made a claim to Co-op on the basis that the RHI payments were misrepresented to him by the supplier.

Co-op responded to the claim to reject it because the 7-year RHI payment period was not over, so Mr W’s alleged loss had not yet fully crystallised to allow any loss to be calculated. Mr W then made a complaint about that decision. Co-op issued a final response saying that it didn’t believe there had been a misrepresentation or breach of contract by the supplier, since it only provided an estimate for the RHI payment, not a guarantee. And it would be impossible to confirm any loss at this time due to the RHI payments being ongoing and future payments being affected by inflation.

Mr W’s complaint was considered by one of our investigators. They thought that the likely RHI payments from the biomass boiler were mis-represented to Mr W, and that fair redress would be for the biomass boiler to cost Mr W no more than a fair estimate of the RHI payments he would receive. Our investigator also said that Co-op should pay Mr W £200 compensation for the trouble and upset caused by its handling of the claim.

Mr W felt that he should receive more redress. He wanted to be paid the difference between what he will receive from the RHI and what he was told he would receive by the supplier, plus fees he paid for a survey and a solicitor when attempting to claim from the supplier prior to it entering liquidation.

Because our investigator was unable to resolve the complaint, I’ve been asked to make a decision.

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.

Having carefully considered everything provided, for much the same reasons as those explained by the investigator, I uphold this case. In brief, that is because the evidence

supports the conclusion that a misrepresentation took place. The supplier miscalculated the RHI payments based on incorrect data, which I think it ought to have realised was clearly wrong. And Mr W agreed to the purchase on the basis of what he was told.

The RHI payment is calculated based on the heat demand of the home. This is shown on the Energy Performance Certificate ("EPC") and is calculated using, amongst other things, the floor area of the property. In this case the floor area on the EPC was about twice the floor area of Mr W's property.

Given the supplier attended Mr W's home, would've understood how the calculations worked and is likely to have had experience of such calculations in similar-sized properties, I think the supplier ought to have realised the calculation was wrong. In any case, I would expect an estimate to be reasonably accurate – but the estimated RHI payments given to Mr W at the time of sale were not.

I've thought about what Co-op has said about future RHI payments being uncertain. But I think it would be appropriate to ascertain, using reasonable assumptions about future inflation rates, what payments Mr W is likely to receive. This will allow the claim and complaint to be settled now, assuming Mr W accepts my decision, rather Mr W having to come back to Co-op in the future. This will give Mr W and Co-op certainty about the outcome of the claim, and hopefully help Mr W to move on from this episode – which has taken a lot of his time over many years.

I think Co-op ought to have accepted the claim initially, since the estimated RHI payments calculated by the supplier were clearly a misrepresentation, being significantly incorrect and unrealistic. So, I think that Co-op didn't treat Mr W fairly and he lost out because of what Co-op did wrong. And this means that it should put things right.

To put things right I am not asking Co-op to make the misrepresentation true – but rather to ensure that Mr W does not suffer a loss – that is, that what he pays for the biomass boiler does not exceed the RHI payments he'll receive. And that he receives some compensation to recognise the trouble and upset caused to him by Co-op's handling of the claim.

I appreciate Mr W will be disappointed with this. But the usual remedy in a case like this would be for the cost of the purchase to be refunded and the product to be returned. That is impractical in this case, since it would involve significant cost and disruption and would still not give Mr W what he wants. But, ultimately, the usual remedy would result in Mr W suffering no loss. So, the remedy I have decided on here results in the same financial outcome for Mr W. I appreciate Mr W claimed for some other costs he incurred in relation to this matter, but I am not persuaded that Co-op should pay these.

I am awarding some additional compensation to recognise the trouble and upset caused by Co-op's handling of the claim – essentially that it rejected the claim when I think it shouldn't have. I appreciate Mr W put in a lot of time and effort with other companies and organisations because of the underlying problem. But I don't have the power to direct Co-op to compensate him for that, nor would I think it reasonable to do so.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr W's complaint for Co-op to put things right by:

1. Calculating all RHI payments Mr W has received to the date of settlement.
2. Calculating the likely future RHI payments Mr W will receive (using reasonable assumptions where necessary).

3. Adding 1. and 2. together to get a total benefit.
4. Calculating the difference between the total benefit in 3. and the amount Mr W paid for the installation.
5. Calculating interest at 8% simple per year on 4. from the time Mr W made the payment/s until the date of settlement.
6. Adding the amount in 4. And 5. together and paying this sum to Mr W, along with an additional £200 in recognition of the trouble and upset caused by Co-op's handling off the claim.

Mr W should provide any evidence to Co-op that it requires to calculate the settlement, such as statements showing the RHI payments he has received.

My final decision

For the reasons I've explained, I'm upholding Mr W's complaint. The Co-operative Bank Plc 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 W to accept or reject my decision before 2 March 2023.

Phillip Lai-Fang
Ombudsman