

## The complaint

Mrs M complains that Clydesdale Financial Services Limited (trading as Barclays Partner Finance) ("BPF") declined her claim for compensation under section 75 of the Consumer Credit Act 1974 in relation to her purchase of a biomass boiler.

(Her husband has sought to join her in this complaint, but he is not an eligible complainant.)

## Background

In 2015 Mrs M bought a biomass boiler. She paid most of the purchase price using a ten year loan from BPF, and that lender is therefore liable under section 75 for any misrepresentation made to her by the retailer. A misrepresentation is an untrue statement of fact or law made by one person to another which induces them to enter the contract, thereby causing them a loss.

The boiler was eligible for financial relief under the government's Domestic Renewable Heat Incentive (DRHI).<sup>1</sup> Ofgem made quarterly payments to her for seven years.

Seven years later, in 2022, Mrs G phoned BPF and said the retailer (which had gone into liquidation) had lied to her. She said she had been told that the DRHI payments would cover the loan, but that she had now unexpectedly found that she would still have three years' worth of loan payments to fund herself in her retirement. She asked BPF for help. But the call handler told her that BPF could not help her, and suggested that she seek independent legal advice.

Mrs G continued to contact BPF about this matter. About six weeks after the initial phone call, BPF sent her a final response letter in which it said that she had been told the correct loan term and had been paid the correct amount in DRHI payments. Being dissatisfied with that response, Mrs G brought this complaint to our service (together with Mr M, although he was not a party to the loan agreement).

BPF argued that our service had no jurisdiction to consider this complaint, because Mrs M had complained more than six years after the sale, and also because complaint handling is not a regulated activity. Our adjudicator explained that Mrs M's complaint was about how BPF had handled her claim under section 75, which is a regulated activity, and so our time limit runs from BPF's rejection of her claim. She also noted that BPF's final response letter appeared to acknowledge that BPF was at least potentially liable for the retailer's actions under section 75.

The adjudicator went on to consider the merits of the complaint. She found that Mrs M was not complaining about the loan agreement, but about a misrepresentation that the boiler would effectively be self-funding when it wasn't. BPF had never really addressed that point, and should have dealt with her claim under section 75 from the start. For its failure to properly respond to her claim the adjudicator recommended that BPF pay Mrs M £300. BPF

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<sup>1</sup> For details of the scheme's operation see <https://www.ofgem.gov.uk/environmental-and-social-schemes/domestic-renewable-heat-incentive-domestic-rhi>

accepted that recommendation.

However, our adjudicator did not think that Mrs M's section 75 claim would have succeeded. Firstly, the paperwork at the point of sale had made it clear that the loan period was ten years, not seven. Secondly, the DRHI payments exceeded the total amount repayable under the loan, so there had been no financial loss caused to Mrs M. Thirdly, Mrs M had brought her claim more than six years after the sale, so BPF would have been entitled to reject it as being brought out of time under the Limitation Act 1980.

Mrs M did not accept the adjudicator's opinion, and so this case has been passed to me 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.

### Jurisdictional issues

Under our rules, only Mrs M is eligible to bring a complaint to our service because only she was a party to the loan agreement. Mr M is not an eligible complainant.

BPF no longer disputes that our service has power to consider Mrs M's complaint, so I do not need to deal with its initial objections in detail. I agree with what our adjudicator said about the subject. Briefly, "to exercise, or to have the right to exercise, the lender's rights and duties under a regulated credit agreement"<sup>2</sup> is a regulated activity and falls within the jurisdiction of our service. Those duties include the duty to consider a claim under section 75. The time limits within which a complaint must be brought to our service are not those set out in the Limitation Act, but in the chapter of the *FCA Handbook* called "Dispute Resolution: Complaints," also known as "DISP". Since the essence of Mrs M's complaint to our service is that BPF rejected her claim under section 75, or did not properly consider her claim, time began to run in 2022 (when she brought her claim), not in 2015 (when she bought the boiler).

So I am satisfied that this is a complaint I have power to consider. I will now consider the merits of this complaint.

### Should Mrs M's phone call have been treated as a claim under section 75?

I have listened to the recording of Mrs M's phone call to BPF in February 2022, in which she first raised her claim. It is clear to me that she was not complaining about the terms of the loan itself, but that she was saying that she had been mis-sold the boiler because the retailer had falsely claimed that the boiler would pay for the entire loan, by way of the DRHI payments. Throughout the call, she consistently repeated that the salesman had lied to her, and had pulled the wool over her eyes. I think that is clearly a claim about a misrepresentation by the retailer, and so it should have been treated as a section 75 claim. It is not clear to me why the call handler thought otherwise.

I think that error is mitigated by the fact that BPF did later go on to treat the matter as a section 75 claim in its final response letter, which was issued within the eight week deadline. I also think that, for reasons I will set out in the next section, BPF was entitled to decline her claim. So I think that the £300 which BPF has agreed to pay in full and final settlement of this matter (if Mrs M wishes to accept it) is a fair way to resolve this complaint.

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<sup>2</sup> Regulated Activities Order, article 60B(2).

### The merits of Mrs M's claim

I do not think that Mrs M's claim could have succeeded, because I do not think that a misrepresentation was made by the retailer, for the following reasons.

Firstly, I am satisfied that it was quite clear on the face of the loan agreement that the loan term was ten years, not seven. In the phone call to BPF, Mrs M said that she knew that the loan agreement said the loan term was 120 months, but she thought that was seven years. I do not think that misunderstanding can fairly be said to be the retailer's fault.

Secondly, although Mrs M was consistent during the call that the retailer had lied to her, she was not consistent about exactly what the lie was. At first, she said that she had not realised that the DRHI payments would only be made for seven years. Later, she said she thought the loan term was only seven years. Of course, the theme common to both of these versions is that she thought the loan term and the duration of the DRHI payments would be the same, and so perhaps her claim would not have failed if this had been the only point against her; I attach less weight to it than to the other points. But BPF would certainly have been entitled to take it into account when evaluating her evidence.

Thirdly, the DRHI payments add up to more than the total amount Mrs M was liable to repay under the loan agreement. The significance of that is twofold. Firstly, the DRHI payments *did* pay for the loan, over a shorter period than the loan term, and so Mrs M actually made a profit from the boiler (notwithstanding that she has already spent the DRHI income and so it is no longer available to repay the loan with). That means there has been no financial loss to Mrs M (see my definition of misrepresentation near the beginning of this decision). Secondly, if the retailer said that the boiler would pay for itself then he was right.

(I do not think the point about the Limitation Act is persuasive, because although BPF would have been entitled to reject Mrs M's claim on that basis, BPF did not rely on it in its final response letter, so it is moot.)

So for the three reasons given above (but especially the first and third), I do not think that BPF erred in declining to uphold Mrs M's section 75 claim.

### **My final decision**

My decision is that I uphold this complaint in part. I order Clydesdale Financial Services Limited (trading as Barclays Partner Finance) to pay Mrs M £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 18 January 2023.

Richard Wood  
**Ombudsman**