

The complaint

Mr S has complained about Clydesdale Financial Service Ltd trading as Barclays Partner Finance (BPF)'s response to a claim he made under Section 75 (s.75) of the Consumer Credit Act 1974 (the Act).

What happened

In October 2013 Mr S bought a solar panel system from a company I'll call C, using a 120-month fixed sum loan from BPF. He paid his loan off in April 2014.

In August 2022 Mr S contacted BPF to make a s.75 claim. He said that the benefits of the panels had been mis-represented to him, because he was told the benefits from the panels would cover the costs of the system and the loan. Because that hadn't happened, he had suffered a financial loss.

BPF rejected the claim and subsequent complaint in a final response issued on 2 February 2023. BPF said Mr S had brought his claim under s.75 too late bearing in mind the provisions of the Limitation Act 1980. It also said that any claim under Section 140A (s.140) of the Act needed to be made within six years of the loan being paid off in April 2014.

As Mr S was unhappy with this response, he brought his complaint to this service. Our investigator reviewed the case and said that, whilst the s.75 complaint had been brought to our service within the time limits, it was fair for BPF to decline to consider the claim he made, and agreed that any claim under s.140 was out of time under our time limit rules.

Mr S did not agree with the assessment and said he had not been aware of the misrepresentation when he took the panels out, and the delays in him realising he had been mis-led were outside his control.

As agreement couldn't be reached, the case was passed for a final 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.

Section 75

Jurisdiction

The ombudsman service's jurisdiction over complaints that a business is liable for under s75, is based upon the lender's failure to honour its liability when the borrower makes a valid claim under that section.

The event complained of here is BPF's alleged wrongful rejection of Mr S's s.75 claim on 2 February 2023, this relates to a regulated activity under our compulsory jurisdiction. Mr S brought his complaint about this to the ombudsman service on 19 April 2023. So, his complaint in relation to the s.75 claim was brought in time for the purposes of our jurisdiction.

Merits

The law imposes a six-year limitation period on claims for misrepresentation and breach of contract, after which they become time barred. This means that after six years, Mr S would no longer be able to pursue the installer through the courts.

In this case the alleged misrepresentation arose when the agreement was entered into on 29 October 2013. Mr S brought his s.75 claim to BPF on 22 August 2022, that is more than six years after he entered into an agreement with it. Given that by this time, Mr S was out of time to pursue a like claim in court, I can't say it was unfair for BPF to have declined to consider a s.75 claim. So, I do not uphold this aspect of the complaint.

Section 140A (s.140)

BPF also considered if Mr S had any claim under s.140 of the Act.

The event complained of here is BPF's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mr S. That "event" continues as long as the loan agreement remains ongoing, but the event ceases, and the time starts under DISP 2.8.2R, when the loan agreement ends – when Mr S paid off his loan.

The relevant rule here is Dispute Resolution rules (DISP) 2.8.2R:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service;

(2) more than;

(A) Six years after the event complained of; or (if later)

(B) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

Unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

Unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2R or DISP 2.8.7R was the result of exceptional circumstances; or

(4) the Ombudsman is required to do so by the Ombudsman Transition Order; or

(5) the respondent had consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2R or DISP 2.67R have expired (but this does not apply to a "relevant complaint" within the meaning of section 404B(3) of the Act).

In this case the loan agreement, and therefore Mr S's relationship with BPF, ended in April 2014 when he paid off the loan. This means Mr S had six years from that date to refer his complaint to the Financial Ombudsman Service.

Mr S brought his complaint in April 2023. More than six years after the event, his relationship with BPF, that he complains about.

I've gone on to consider whether the complaint was referred to the Financial Ombudsman Service within three years of Mr S being aware, or when he should reasonably have become aware, that he had cause to complain.

Mr S has complained that he was induced into taking out the loan, because he was falsely told the benefits of the system would cover the costs. He says he was told explicitly that he would recoup the amount he paid within seven years.

I think it would have been clear within three years of the installation that the benefits he was seeing were not going to cover his costs as he was led to believe. Mr S would have had access to his meter readings, his FIT payments and his energy bills which would have allowed him to compare what he was receiving and saving, with what he was committed to pay and enable him to see that the system would not pay for itself within the time he was expecting.

This means the three-year part of the rule, does not extend the time Mr S had to make the complaint. So, I agree any such claim would be out of time under our rules.

It follows from the above that whilst I sympathise with Mr S's concerns over the sale of his panels, I cannot ask BPF to do anything further.

My final decision

It is my decision I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 October 2024.

Sarah Holmes
Ombudsman