

The complaint

Mrs V has complained about the way Clydesdale Financial Services Limited trading as Barclays Partner Finance (BPF) responded to a claim she'd made under section 75 (s75) and section 56 (s56) of the Consumer Credit Act 1974 (the "CCA") and in relation to an alleged unfair relationship taking into account section 140A (s140A) of the CCA.

Mrs V has been represented in bringing her complaint but, to keep things simple, I'll refer to Mrs V throughout.

What happened

In April 2014 Mrs V bought a solar panel system ("the system") from a company I'll call "P" using a 10-year fixed sum loan agreement from BPF. The system cost £9,949 and Mrs V paid a £100 deposit. Mrs V was due to make 120 repayments of £128.56 per month.

I understand Mrs V settled the agreement in May 2015. She said she took out a loan of £16,000, part of which was used to settle the agreement with BPF.

Mrs V sent a claim to BPF in November 2020 saying the system was misrepresented by P. In summary, she said:

- She was cold called and told by P she could be entitled to a system at no cost to her, so she agreed to a meeting.
- She was misled into thinking the system cost around £9,500 but with interest it cost around £15,500.
- She was promised a tax-free year 1 benefit of around £1,550, but it wasn't explained that after making the monthly loan repayments there'd be no benefit. She said she had an actual deficit of around £900.
- P told her the system would be self-funding.
- The feed in tariff (FIT) payment she'd received from June 2014 to July 2020 was around £650 per year but she was told she'd receive around £1,550 annually.
- Many other customers have complained about similar issues.
- She was pressured into signing the agreement.
- She was misinformed the inverter would be under warranty for 10 years.
- She wasn't informed the performance of the system would deteriorate through degradation.
- BPF and/or P made other failings such as not assessing her creditworthiness; disclosing commission; providing a cooling off period or cancellation rights; or complying with the Renewable Energy Consumer Code (RECC).

Mrs V requested the agreement was ended along with a refund of all sums paid towards it together with interest.

BPF responded to the claim in December 2020 and said, in summary:

- The system was performing better than expected.
- There was no evidence Mrs V was told the system would be self-funding.

- The loan agreement was clear in setting out the terms of payment and total amount payable.
- The sales documentation estimated the system would generate 3,590kWh annually but the FIT statements show the panels generated more than that (3,641.40kWh) between June 2014 and June 2015.
- Mrs V had likely been able to reduce her energy consumption by at least 1,347kWh per year depending on actual usage and behaviour.
- Mrs V signed the loan agreement and was given the option to withdraw, and her contract with P would have had cancellation rights.
- The system was covered by Insurance Backed Guarantee (IBG).

Mrs V complained and BPF sent a final response letter in February 2023 reiterating what it had said in its previous response. Mrs V decided to refer her complaint to the Financial Ombudsman.

Our investigator ultimately concluded, in summary:

- BPF's affordability checks were proportionate. And he noted Mrs V was able to obtain a larger loan around a year after taking out the agreement with BPF. He thought that indicated Mrs V wasn't experiencing financial difficulties. And that the BPF loan was affordable.
- He'd not seen any commission paid.
- The benefits received were similar to the estimates.
- The point of sale document said the first year costs were around £1,550.
- The system had slightly over-performed when compared to the estimate. He thought the system would have earned Mrs V more than the cash price after around eight years, so he thought the system would have paid for itself within the loan term.
- He made no recommendations.

Mrs V didn't agree. She said the yearly payments were around £1,550 so she wouldn't have committed to an agreement with a deficit of around £650 per year. She said she was misled by P. As things weren't resolved, the complaint has been passed to me to decide.

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.

I want to acknowledge that whilst I've summarised the events of the complaint, I've reviewed everything on file. If I don't comment on something, it's not because I haven't thought about it. I'm focussing on what I consider are the key issues.

Mrs V paid for the system using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

Mrs V hasn't disputed what our investigator said in relation to the unaffordable lending and commission aspects of the case. I'm not going to cover that off again in detail. I'm focussing on the points that are in dispute. But, for the avoidance of doubt, I don't think Mrs V has shown us enough to conclude BPF irresponsibly lent to her, and I've not seen any evidence commission was paid, so I agree with our investigator's conclusions on those points.

The s75 complaint

The law imposes a six-year limitation period on claims for misrepresentation and breach of contract, after which they become time barred.

In this case the alleged misrepresentation and alleged breach of contract cause of action arose when an agreement was entered into in April 2014. Mrs V brought her s75 claim to BPF in November 2020. That is more than six years after she entered into an agreement with it. Given this I think it was fair and reasonable for BPF to have not accepted the s75 claim. So, I do not uphold this aspect of the complaint.

The unfair relationship under s140A complaint

When considering whether representations and contractual promises by P can be considered under s140A I've looked at the Court's approach to s140A.

In *Scotland & Reast v British Credit Trust* [2014] EWCA Civ 790 the Court of Appeal said a court must consider the whole relationship between the creditor and the debtor arising out of the credit agreement and whether it is unfair, including having regard to anything done (or not done) by or on behalf of the creditor before the making of the agreement. A misrepresentation by the creditor or a false or misleading presentation are relevant and important aspects of a transaction.

S56 of the CCA has the effect of deeming P to be the agent of BPF in any antecedent negotiations.

Taking this into account, I consider it would be fair and reasonable in all the circumstances for me to consider as part of the complaint about an alleged unfair relationship those negotiations and arrangements by P for which BPF were responsible under s56 when considering whether it is likely BPF had acted fairly and reasonably towards Mrs V.

But in doing so, I should take into account all the circumstances and consider whether a Court would likely find the relationship with BPF was unfair under s140A.

What happened

Mrs V says she was verbally misled that the system would effectively pay for itself. So I've taken account of what Mrs V says she was told. I've also reviewed the documentation that I've been supplied.

I'm conscious the fixed sum loan agreement sets out the amount being borrowed; the interest charged; the total amount payment; the term; and the contractual monthly loan repayments. I think this was set out clearly enough for Mrs V to be able to understand what was required to be repaid towards the agreement.

Mrs V signed a solar PV contract and was supplied an Annual AC Output calculation document setting out:

- The cash price of the panels is £9,949.00
- The estimated annual generation is 3,590 kWh
- The predicted FIT benefit in the 1st year is £516.17
- The predicted export income is £85.61
- The predicted electricity savings are £287.16
- The estimated total 1st year benefit is £888.94

I think the figures were presented fairly, and not hidden within small print for example. And I think they were supplied to Mrs V because one of the documents was signed, and she

submitted them with her claim. The documents aren't particularly long, and I think she would have been given sufficient time to review them before the installation was carried out. It's also not clear why it took Mrs V many years to complain about the system if she was unhappy with it. The claim was put in about six and a half years after she entered into the agreement.

It seems as though the panels are generating slightly more than was estimated. Our investigator calculated the annual generation at 3,832.50kWh between June 2014 and March 2020. So I think the actual system would have paid for itself within the term of the loan. But I take Mrs V's point that she was required to pay interest on the loan. Although I also note she paid it off around a year after taking it out and said it became more affordable.

The payments towards the loan agreement were around £1,550 per year. I agree there was a shortfall if Mrs V were to continue in the loan for the full term. However, I think Mrs V ought to have seen the estimated savings of around £890 wouldn't have covered the total loan payments. As I said above, I think the form setting this out was relatively clear. So while I've taken on board what she's said happened in 2014, I would have expected Mrs V to have queried the shortfall if she thought she'd been told the system would cover the total loan payments.

Overall, while I've carefully considered what Mrs V says she was told, given what I've set out above, I'm not persuaded there's sufficient evidence Mrs V was misled the system (and associated loan agreement) would be self-funding. Therefore, I don't have the grounds to say that BPF's decision to decline the claim was unfair.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V to accept or reject my decision before 31 May 2024.

Simon Wingfield
Ombudsman