

The complaint

Mr B has complained about the way Clydesdale Financial Services Limited trading as Barclays Partner Finance (“BPF”) responded to claims he’d made under the Consumer Credit Act 1974 (“CCA”).

Mr B has been represented in bringing his complaint but, to keep things simple, I’ll refer to Mr B throughout.

What happened

In March 2014 Mr B bought a solar panel system (“the system”) from a company I’ll call “H”. The documentation indicates he was originally going to pay for the system by cheque. But he decided to pay for it using a fixed sum loan agreement with BPF. The system cost £7,500 and Mr B paid a £2,000 deposit. The total amount payable was £10,680.80. And it was to be paid back with 120 monthly repayments of £72.34. I understand Mr B repaid the loan early in July 2016.

I understand Mr B wrote to BPF in October 2021 claiming there’d been an unfair relationship under section 140A (s140A) of the CCA. In summary, he said:

- He was cold called and persuaded to allow a representative from H to visit him at home to discuss solar panels.
- During the presentation H’s representative made several misrepresentations which induced Mr B into entering into the contract for the system.
- H said the system was self-funding.
- H said electricity generated by the system would lead to Mr B being paid a Feed in Tariff (FIT) which would generate income under a government backed scheme.
- H told him he’d make significant savings on his electricity bills.
- He wasn’t given time to consider the paperwork or weigh up his options.
- Since the installation he’s received an average income of around £40 per month leaving a monthly shortfall of around £30.
- H breached the Renewable Energy Consumer Code as a result of the sales practices it adopted.

BPF said the point of sale documentation estimated an annual generation of 2,391kWh and provided a first year benefit estimate of £566. It said the documentation confirmed the total cost of the system was £7,500 and the credit agreement set out the total amount payable. It said the documentary evidence provided contradicts Mr B’s allegations the system was mis-sold. Moreover, it said based on the FIT information provided, the system actually exceeded the point of sale estimates by generating 2,754kWh in year one. Mr B decided to refer his complaint to our service to consider.

One of our investigators looked into things and ultimately didn’t uphold the complaint. She took on board Mr B’s testimony, but thought the sales documentation likely reflected the nature of the discussions that took place between Mr B and H. She said she didn’t think it likely H sold the system on the basis it would be self-funding over the term of the loan when

the facts and figures displayed a shortfall between the total cost and year one benefit. So she made no recommendations.

BPF had nothing further to add, but Mr B didn't agree. In summary, he noted our investigator had previously found the paperwork didn't go into enough depth to clearly show Mr B how the cost compares with the benefits. He said the information wasn't clear and provided enough uncertainty for him to base his decision to purchase the system on verbal misrepresentations. He said he was told the entire purchase would be self-funding. He also said it's been widely accepted by BPF and the Financial Ombudsman that solar panel companies did make verbal misrepresentations to clients, particularly where the documents are unclear.

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.

Mr B 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.

I've considered whether representations and contractual promises by H can be considered under s140A.

Therefore, I've considered the court's approach so far as it is relevant to the merits of the s140A complaint I am considering. Relevant matters set out in s140A(1) would include misrepresentations and other false or misleading statements as to relevant and important aspects of a transaction. Section 56 (s56) of the CCA has the effect of deeming H to be the agent of BPF in any antecedent negotiations. BPF is responsible for the antecedent negotiations H carried out direct with Mr B.

I think the negotiations were antecedent because they preceded the relevant conclusion of the agreement. The scope of 'negotiations' and 'dealings' is wide. And 'representations' covers statements of fact, contractual statements and other undertakings. Taking this into account, I find it would be fair and reasonable in all the circumstances for me to consider H's negotiations and arrangements for which BPF was responsible under s56 of the CCA when deciding whether it's likely BPF had acted fairly and reasonably toward Mr B.

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

Mr B says he was verbally misled the entire purchase would effectively pay for itself. So I've taken account of what Mr B says he 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 payable; the term; and the contractual monthly loan repayments. I think this was set out clearly enough for Mr B to be able to understand what

was required to be repaid towards the agreement. Mr B signed the agreement to indicate he agreed and understood what was required.

I'm also mindful the solar performance quotation and contract Mr B was given, and that he signed, said the system came with an estimated annual output of 2,391kWh. It set out the cost of the system was £7,500 and the estimated total year benefit was £566. The second page of the quotation and contract, that was also signed by Mr B set out the same figures. I think the figures were presented clearly, and not hidden within small print for example. The document isn't particularly long, and the relevant information is contained within a couple of pages – both of which were signed by Mr B. Even without taking the fixed sum loan agreement into account, I think it's clear enough the system wasn't estimated to pay for itself within 10 years. I would have expected Mr B to query the shortfall if he'd been told the system would be self-funding. On balance, I consider Mr B was given sufficient time to review the forms and query anything he was unhappy about before H carried out the installation. It's also not clear why it took Mr B many years to complain about the system if he was unhappy with it. From what I've seen, it was over seven years after the date of sale.

Overall, while I've very carefully considered what Mr B says he was told, given what I've set out above, I'm not persuaded there's sufficient evidence he was misled the system would be self-funding. Therefore, I don't have the grounds to say that BPF's ultimate answer to the complaint 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 Mr B to accept or reject my decision before 19 April 2024.

Simon Wingfield

Ombudsman