

The complaint

Ms L complains that Specialist Lending Limited rejected a claim she made under Section 75 (s.75) of the Consumer Credit Act (“CCA”).

What happened

In September 2019, Ms L purchased a battery for her existing solar panel system from a supplier (“the supplier”), using a ten-year fixed sum loan agreement with Specialist Lending.

In April 2021, Ms L contacted Specialist Lending to make a claim under s.75. She said the supplier had misrepresented the system, because she had purchased the system on the understanding that it would pay for itself. But the benefits were never as high as she was led to believe and as such her loan repayments were not offset by the savings.

Specialist Lending responded to the claim in its final response dated 15 June 2021 when it rejected the claim and treated it as a complaint, saying that if Ms L was unhappy with its response she could refer the matter to the Financial Ombudsman Service, which she did.

Our investigator said the complaint should be upheld. They felt that the supplier had misrepresented the battery to Ms L as being self-funding when it was not. They said to put things right Specialist Lending should rework the loan so that Ms L paid no more for the battery than the benefit it would provide over the original loan term, paying interest on any overpayments Ms L had made for the time she was without that money, plus £100 compensation for the trouble and upset caused by its response.

Specialist Lending accepted that the complaint should be upheld, and £100 compensation should be paid. But Specialist Lending felt the redress should be based on the benefit the battery would provide over 15 years instead of ten. Specialist Lending said this was how long the battery was expected to last and so was likely to be how long Ms L would benefit from it. Specialist Lending didn’t think it should add any interest to the settlement. In support of this, Specialist Lending pointed to a court case known as “Hodgson” which related to solar panels and where the court took into account the benefits of the solar panels over their expected lifetime.

Because the complaint has not been resolved, I’ve been asked to make a decision. Specialist Lending has since said the debt has been sold and suggested this complaint should now be against the debt purchaser.

Issued a provisional decision explaining that I was planning to uphold this complaint and award redress broadly in line with what our Investigator recommended.

Specialist Lending did not respond to my provisional decision. Ms L responded to say that she has paid over £5,000 for the battery already, no longer receives grid trading benefits, and doesn’t know if she is making any savings on her electricity bills, which are large.

While I’ve taken Ms L’s comments into account I am not persuaded to change my decision from what I set out in my provisional decision. I appreciate that it is difficult for Ms L to know

what savings she is making on their electricity bills compared to what she would've been paying without the battery. But it is likely her bills would be higher to some extent without the battery, and higher still without the solar panels (although I appreciate she does not own the solar panels or receive FIT payments for the electricity they generate).

My decision allows Specialist Lending to estimate the savings based on the available information, which is the best we can do in the circumstances.

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.

Specialist Lending has accepted that this complaint should be upheld. So, it would not be a good use of Financial Ombudsman Service resources for me to go over that ground again. This means the only thing for me to decide is how Specialist Lending should put things right.

Specialist Lending was the creditor at the time Ms L made her s.75 claim and her complaint is about Specialist Lending's response to that claim. As such I think any liability in relation to this complaint lies with Specialist Lending rather than the debt purchaser. So, this complaint remains against Specialist Lending. Of course, Specialist Lending is free to pursue the debt purchaser for reimbursement of any redress it pays to Ms L if it feels that the debt purchaser accepted liability for this when it purchased the debt.

When reaching my decision, I've thought about what would be fair and reasonable in all the circumstances of the complaint. This complaint was upheld by our Investigator because they were satisfied that the supplier misrepresented the system to Ms L and if that hadn't happened she wouldn't have purchased the battery.

Normally, s.75 redress following a misrepresentation would be to rescind the contract, the goods to be returned and the customer to receive a full refund (less any benefit received). But in the case of battery storage for a solar panel system, there are good reasons to find another solution. This is because the normal redress is expensive for the lender and disruptive for the customer – as well as counter to public policy of moving electricity production towards net zero.

Our Investigator suggested Specialist Lending pay redress so the battery will cost no more than the savings it will likely provide over ten years (being the term of the loan). This would leave Ms L to continue to benefit from savings for as long as the battery keeps working, with those benefits offsetting potential maintenance costs.

Specialist Lending has argued it would instead be appropriate for the battery to cost Ms L no more than the benefit she will likely receive over 15 years – being the battery's assumed lifespan. This makes the redress cheaper for Specialist Lending and means that Ms L has to pay more for the battery.

I've taken into account what Specialist Lending has said, but I think our investigator's approach strikes the right balance of fairness. This is because I could follow the usual approach for s.75 misrepresentation redress. This would be the most expensive option for Specialist Lending, which would have to refund her and pay for the battery to be removed and disposed of. And while Ms L would receive a larger refund, she would lose the benefit of the battery going forward. And to do this would appear to be against public policy.

Specialist Lending's suggested approach would mean that Ms L pays for more for the battery. I appreciate that she may benefit from it for up to 15 years, or perhaps longer if it remains working beyond this period. But the older the battery gets the more it will degrade and the less effective it is likely to be at storing electricity and saving Ms L money on her electricity bills.

I'm also mindful that the quoted benefits said that *"battery cells degrade over time and you will be required at some point to have these cells replaced to ensure you continue to receive the benefits set out in this contract. Our reasonable estimate is that such replacement will need to occur around Year 15 of this contract, however a replacement may need to occur before or after this time"*. Essentially, this means that the longer into the future we estimate the benefits to Ms L, the less reliable those estimates will be, and the more likely that she will have to pay for maintenance to ensure the battery continues working effectively.

Ms L also purchased the battery expecting to receive grid trading benefits. But the electricity supply company that provided those benefits has since ceased trading, so she no longer receives that benefit (and no supplier now offers such benefits as far as I am aware), and in any case those benefits were never as much as she was led to expect.

Given the uncertainty involved in long term estimates of the battery's benefits, I could make the argument for simply rescinding the contract. But as I said that is the most expensive option for Specialist Lending and there are good reasons not to do this.

Overall, I think making it so the battery costs no more than the benefit over ten years strikes a good balance between ensuring that Ms L pays a reasonable amount for the battery and Specialist Lending is not put to unnecessary expense in putting things right.

I have thought about the approach to redress in the Hodgson judgement, which related to a solar panel system rather than battery storage. But I am not required to do what a court would do, only to reach an outcome that is in my opinion fair and reasonable in all the circumstances of this complaint. So, while I have taken into account the Hodgson judgement (being relevant case law), I am not persuaded I must follow a similar approach, or that it would be fair and reasonable to do so in this complaint.

Putting things right

In this case things are complicated somewhat by Specialist Lending having sold the outstanding debt. This being the case, I've made the assumption that Ms L will repay the outstanding loan over its full original term. But because of this, and the fact she could use any redress from this complaint to pay off some of the loan early – meaning she pays less interest on the loan – I have decided not to award interest in this case. I think this strikes an appropriate balance between ensuring Ms L is fairly compensated, without risking her being overcompensated.

To put things right, Specialist Lending should:

- A. Calculate the likely benefit of the battery over ten years. When doing so, Specialist Lending can take account of:
 - a. Ms L's electricity usage and the electricity unit price she paid from her electricity bills where available and reasonable assumptions where they are not.
 - b. The generation capacity of Ms L's solar panel system (3,632kWh per year as shown on the quote).
 - c. The storage capacity of the battery.
 - d. Where available, information Ms L provides about her usage of the battery (such as from an app, meter or monitor if she has one) and reasonable assumptions where necessary (including if Ms L cannot or does not provide this type of information).
- B. Pay Ms L the difference between A and the total amount payable under the loan agreement assuming the loan runs to its full term.
- C. Pay Ms L £100 compensation for the trouble and upset caused.

Specialist Lending should also provide Ms L with a breakdown or written explanation of how it calculated the settlement.

My final decision

For the reasons I've explained, I uphold this complaint. I direct Specialist Lending Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 12 November 2024.

Phillip Lai-Fang
Ombudsman