

The complaint

Mr K F has complained that Clydesdale Financial Services Limited trading as Barclays Partner Finance “Barclays PF” rejected the late Mr M F’s claim against it under Section 140 of the Consumer Credit Act 1974.

The complaint is about a solar panel system “the system” that the late Mr M F bought. But the complaint has been brought on behalf of the late Mr M F by his representative, Mr K F. To keep things simple, I’ll refer to the late Mr M F as the late Mr F and his representative as Mr K F.

What happened

The late Mr F bought a solar panel system (the system) for his home in 2014. The purchase was funded by a loan from Barclays PF, and that business is therefore liable for the misrepresentations and/or breach of contract under the relevant legislation. In this case, Mr K F alleges that the late Mr F was misled by the installer into believing that the panels would be self-funding. Mr K F says he believes that the late Mr F was told that the energy generated by the system and sold to the National grid would cover the cost of the loan. He says the late Mr F was told that installing the system wouldn’t cost him anything and will save him money and that the whole scheme was backed by the government.

The late Mr F’s complaint was considered by one of our investigators. Barclays PF provided evidence that it had written to the late Mr F in 2020 as part of an exercise reviewing the supplier for potential mis-selling. Barclays PF had asked him if he wanted to be part of the review and if he had any concerns with the sale. He responded that he did not want to be part of the review. Based on this, and the fact that there was no testimony directly from the late Mr F, she felt there was no evidence that any misrepresentation had taken place. So, she didn’t recommend the complaint should be upheld.

Mr K F responded that the late Mr F was elderly and vulnerable and had indicated he was unhappy but simply didn’t have the will to pursue a complaint at the time. He felt the late Mr F was vulnerable and had expressed dissatisfaction about the sale, so Barclays PF ought to have investigated the sale then, when he could’ve provided more testimony. He submitted a sales document showing that the supplier had provided estimates showing the system would produce significant financial benefits, and he felt his father had relied on this. He re-iterated his concerns that the late Mr F had been mis-led. He also submitted a handwritten document showing that the late Mr F was unhappy with the solar panels.

Our investigator still felt the complaint shouldn’t be upheld because the late Mr F’s only mention of any dissatisfaction was in relation to a “niggling” issue with the interest charged but he’d also explicitly requested to not be part of the review. So, she didn’t think Barclays PF had done anything wrong. As the complaint couldn’t be resolved by our investigator, I was asked to make a decision.

On the 20 February 2025, I issued a provisional decision to both parties explaining why I wasn’t intending to uphold this complaint. Barclays PF did not make any further comments. Mr K F disagreed with my findings, and I will address his concerns below.

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.

In my provisional decision I explained the following:

In this case the relevant law includes section 140 and section 56 of the Act. Section 140 is about unequal relationships between the parties to a credit agreement. In this case, Mr K F relies on the alleged misrepresentation of the system.

Section 56 is also relevant. This is because it says that any negotiations between the late Mr F and the supplier, are deemed to have been conducted by the supplier as an agent of Barclays PF.

For the purpose of this decision, I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

Having carefully considered everything provided, for broadly the same reasons as those explained by the investigator, I do not intend to uphold this complaint.

Our investigator has explained why we have jurisdiction to consider this complaint, and as neither party has disputed this, I do not need to address this as part of this decision.

Firstly, I reiterate our investigators concerns that we have no direct testimony from the late Mr F regarding the alleged misrepresentations that Mr K F has claimed took place, and the sale was conducted by the supplier and the late Mr F. Mr K F was not a party to the contract and I have to bear this in mind when considering how much weight to place on his testimony. I have, however, thought carefully about his views and concerns, as part of my assessment of this complaint. Additionally, given the time that's passed since the sale, there is also limited documentary evidence available – for example, the credit agreement is no longer available. In cases where there is limited available evidence, I have to make a decision based on the evidence that is available and decide on the balance of probabilities what I think is more likely.

I've seen a copy of the response form submitted by Barclays PF asking whether the late Mr F wanted to be included in a review of the sales made by this particular supplier. I've thought about Mr K F's view that the late Mr F was vulnerable and indicated he wouldn't trouble himself with looking for sales documents to pursue a complaint – and this is why he didn't want to be included in the review.

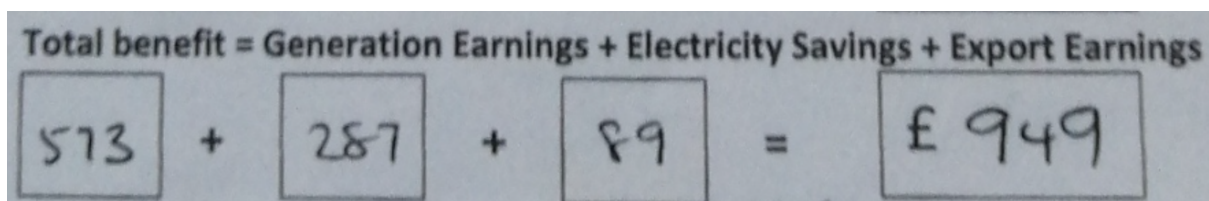
But the late Mr F did reply saying he didn't want to be included in the review and said he was "content" with the installation. And as explained by our investigator, his only "niggling" issue was about the interest charged. I reiterate that, as his concerns were minor and he didn't want to be included in any reviews, I don't think it's unreasonable that Barclays PF didn't go on to have any further contact with the late Mr F at this time.

I have taken into consideration that the late Mr F was invited to raise any concerns with the sale, and he chose not to. The sale was conducted in 2014, so a significant amount of time had passed since the system had been installed. By this time, the late Mr F would've known what financial benefits he was receiving and known if they hadn't met any expectations set by the supplier at the time of sale. So, if he had been told that the financial benefits would be sufficient to cover the cost of the loan, and he had relied on this, but that hadn't happened, I

would have expected him to have mentioned this – especially since he did mention his minor concerns over the interest charged on the loan. I don't think it logically follows that the late Mr F mentioned a niggling issue, but would fail to mention that the financial benefits weren't sufficient to cover the cost of a loan, especially if this is the main reason he bought the system (as Mr K F alleges).

I've gone on to look at the sales documentation submitted by Mr K F, and any remaining evidence submitted by both parties. I'm satisfied that the late Mr F was provided with the sales documents, as Mr K F sent us a copy. From what I know about how sales are usually made, and the information given to consumers during the sales process, I think, as Mr K F says, this would have been discussed and would've been part of the sales process.

The document is headed SAP calculations and first year returns. And the first-year returns are estimated to be £949. The document also sets out that the late Mr F's total loan payments including interest was £13,675.



Total benefit = Generation Earnings + Electricity Savings + Export Earnings

573	+	287	+	89	=	£ 949
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From Barclays PF'S records and account statements, I can see that the system cost £8,755, and the late Mr F paid a deposit of £100. The amount of credit was therefore £8,655. The total amount borrowed is as stated in the above document £13,675 including interest (less £100 for the deposit paid). The late Mr F's monthly payments were just over £113, and the loan was to be repaid over 10 years.

While I haven't seen a credit agreement, I think its likely that this would all have been set out on the credit agreement. And I think its unlikely that the late Mr F would've taken out a 10-year loan without seeking out the basic facts about the loan. Additionally, the loan was maintained by the late Mr F very well over many years.

So, I'm satisfied that the late Mr F was given the estimated first year benefit as well as the costs of his loan during the sales process. I think it's clear (without doing any complex calculations) that to repay a loan for £13,575 over 10 years, that he'd need at least £1,357.50 a year to break even – and his first-year estimate of £949 falls significantly below that. Additionally, 12 monthly payments of £113 amounts to more than £949.

Overall, I think the documentation would have made it clear that the solar panels would not be self-funding in the way Mr K F now alleges, and the financial benefits received would not cover the cost of the loan.

I have also thought about Mr K F's concerns, that the document does set out below this first year estimate that the 20-year estimated financial benefit is between £39,126 and £25,451- and these are substantial. But estimating so far into the future is difficult to predict with any certainty, which is why the range is so wide – and I think it's likely this would've been made clear during the sale – which is common in these types of sales. I think it's more likely the first-year estimate, which is easier to predict as it's based on current electricity rates, is likely to be more reliable in terms of what the late Mr F could realistically hope to achieve in the near future, and he would have relied more heavily on this. And as explained above, this made it clear that the financial benefits would not cover the cost of the loan.

If the late Mr F had been told something different, on reviewing and discussing this document, I would have expected him to have questioned what he had been told. I've seen no evidence that he did either at the time of sale, or subsequently when Barclays PF enquired about the sale, so I think that suggests that the document most likely did not contradict the late Mr F's understanding, at that time.

I would add given the rising cost of utilities now, it is likely that the solar panels will provide consumers with substantial benefits going forward and have done so for many years now. I understand Mr K F's concerns regarding the late Mr F's age and vulnerability. He has not benefited from the system for the full lifespan of the system – which is between 20 to 30 years. But consumers install systems like these in their homes for many reasons, not solely to gain financial benefits for themselves. I think it's apparent that these systems have a long-term lifespan, and the late Mr F would have been aware of his own age. I've seen nothing to suggest that he didn't have the capacity to understand the nature of the system, or the contract that he entered into. So, I'm not persuaded that despite his age, that Barclays PF has done anything wrong here.

Finally, I have looked at the handwritten note submitted by Mr K F that he says was written by the late Mr F showing he was unhappy with the system. However, this relates to a subsequent breakdown and the length of time it took the suppliers to repair the system. It does not show any dissatisfaction with the way the system was sold, nor mention the alleged misrepresentations. The only direct evidence we do have about the late Mr F's view of the sale, is his response to the review invitation sent by Barclays PF.

Summary

While I've thought carefully about Mr K F's concerns, I find the documents from the time of sale and the late Mr F's subsequent behaviour (maintaining payments for many years, refusing to be part of the review and being content with the installation), to be more persuasive evidence. So, on balance, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint. Considering that I haven't found any misrepresentation, I think a court is unlikely to conclude that there is an unfair relationship under section 140 of the Act. So, I don't think Barclays PF acted unfairly by declining this claim.

Mr K F responded to my provisional decision with the following comments and also submitted a number of documents which I've reviewed.

- He said that while Barclays PF may not have all the sales documentation, he had a file which he submitted. He questioned how Barclays PF was planning to complete a review with such little documentation if the late Mr F had wanted to be included in the review. He felt placing the onus on consumers to find sales documents was the reason the late Mr F had opted out of being included in the review.
- Mr K F also highlighted that while I had taken note of the late Mr F's comments about the niggling concerns around interest, I hadn't considered the comment that he was too busy to look for documents – and these are not the words of a happy consumer. He re-iterated that Barclays PF should have followed up that statement at the time and should never have put the onus on consumers to go searching for sales documents, especially given the late Mr F's vulnerability.
- Mr K F went on to explain he felt that since these systems have a long-term life span, the late Mr F wouldn't have been put off with the first-year deficit and would have instead relied on the long-term projections stated in the estimated benefits form. He added that the sales literature was positive and highlighted the comment "*The best investment you will ever make*".

- Finally, Mr K F reiterated that his father's decision to decline having his sale reviewed was not because he was happy, but because he couldn't be bothered providing Barclays PF with all the documents it needed to complete the review.

Firstly, I think it's important to note, that I am not looking at a complaint against the supplier and all it did. I am looking at whether Barclays PF has responded to the late Mr F's claim in a fair and reasonable manner. Barclays is not the supplier and did not sell the system to the late Mr F – and it is quite common in these types of cases for businesses such as Barclays PF to request any evidence available from consumers to enable it to review any sales. Where no documents are available or accessible, consumers could still have asked for a review and Barclays PF would have had to complete its review based on the documents it was able to obtain either from consumers or the suppliers directly. But I don't think it acted unreasonably in asking consumers wishing to be included in the review for documents – its common practice and may have helped Barclays PF with reviewing a sale more swiftly. And I reiterate, the late Mr F specifically asked not to be included in the review and I don't think it's unreasonable for Barclays PF to have respected his wishes. While I've thought about the late Mr F's age, there's nothing to indicate he lacked capacity, so I don't think it's appropriate to claim that Barclays PF ought to have disregarded his wishes and completed the review in any event.

As I explained in my provisional decision, I am still of the view that while the late Mr F had commented that he couldn't be bothered looking for any sales documents, he had not mentioned anything about the system being misrepresented to him. In fact, he said he was "content" with the installation. I reiterate that by this time, he would've had the system for a number of years and would have known how much benefit he was receiving and how much he was paying Barclays PF for it. And bearing in mind he mentioned smaller issues, I think it's more likely that if he felt the system had been misrepresented to him, and the benefits he was receiving did not match his expectations or representations made during the sale, he would have commented as such. Not being bothered to look for documents simply is not the same as saying the system was misrepresented to him. I am still persuaded that had the late Mr F felt the system had been mis-sold to him, he more likely would have stated this, even if he couldn't be bothered looking for the sales documents at the time.

I have looked through the documents Mr K F has submitted, and I have no doubt the system was presented as being a good investment and it was promoted to him – that is the nature of selling items. But I've seen nothing that indicates the supplier was selling the system as self-funding that would indicate the system was misrepresented to him in the way Mr K F has now alleged.

I've thought about Mr K F's concerns that given the long-term nature of solar panels, he feels the late Mr F would more likely have relied on the long term estimated benefits rather than first year benefit showing a deficit. I've considered his concerns that I have relied on what I think was sales practices regarding the estimated benefits when I cannot know for sure that such sales practices were followed in this instance. I accept that there is a lack of evidence here, both documentary as well as direct testimony from the late Mr F. So, I have to rely on the available evidence which includes usual sales practices in the industry.

Given what I know of how these sorts of sales were usually made, I still think it would have been made clear that these sorts of estimates are just that - *estimates* not guarantees. And I think it would have been made clear to him that estimating benefits 20 years into the future involves using a range of assumptions and isn't an exact science. Additionally, I would reiterate, given the cost of electricity, consumers who've bought solar panels *have* generally saved substantial amounts.

I understand Mr K F feels that I am not upholding the late Mr F's complaint simply because of a tick box answer in response to a review invitation. But I disagree, I have thoroughly considered all the evidence available, including any documentary evidence as well as the wider circumstances of this complaint. This includes the comments he made in the review invitation, facts such as the late Mr F having had the panels for many years post installation and not raising any concerns directly, that we have no direct testimony from him alleging any such misrepresentation, as well as the sales documents not indicating the system would be self-funding, and the estimated first year benefits showing there is a clear deficit between the costs and benefit. There is simply not sufficient evidence in this case that the late Mr F was misrepresented to in the way Mr K F has now alleged.

Overall, I'm still not satisfied that there's sufficient evidence that the system was misrepresented to the late Mr F. Based on the above, I see no reason to depart from my findings as set out in my provisional decisions. So, I still think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint. And considering that I haven't found any misrepresentation, I think a court is unlikely to conclude that there is an unfair relationship under section 140 of the Act. So, I don't think Barclays PF acted unfairly by declining this claim.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr F to accept or reject my decision before 16 April 2025.

Asma Begum
Ombudsman