

The complaint

Mr L has complained about the way Clydesdale Financial Services Limited trading as Barclays Partner Finance ("Barclays") responded to claims he'd made under section 75 ("s.75") of the Consumer Credit Act 1974 ("the CCA"), and an alleged unfair relationship taking into account section 140A ("s.140A") of the CCA. Mr L also complained that the lending had been unaffordable.

Mr L has been represented in this complaint. To simplify matters, I refer to Mr L in this decision.

What happened

In March 2014, Mr L entered into a fixed sum loan agreement with Barclays to pay for a £10,949 solar panel system ("the system") from a supplier I'll call "P". After the deposit was paid, the credit amount was £10,849. Mr L was due to pay back the agreement with 120 monthly repayments of £141.49.

In August 2022, Mr L put in a claim with Barclays explaining he thought the system was misrepresented to him. In summary, he said that:

- P told him that the system would be self-funding.
- P had deliberately misled him at the point of sale as the system has not been self-funding.
- Barclays was responsible for the misleading statements made by P.
- Barclays had agreed a loan that was unaffordable.

Ultimately, Mr L said the system was misrepresented and believed the statements and several other actions at the time of the sale created an unfair relationship between himself and Barclays.

Barclays sent a final response letter on 12 April 2024. Barclays disagreed with Mr L about these matters. Unhappy with that response Mr L asked this service to consider the complaint on 27 August 2024.

Mr L's complaint was considered by an Investigator, in summary they thought that:

- The disallowed s.75 claim was one we could consider. But our investigator thought the merits of that consideration would be affected by the Limitation Act 1980 ('LA'). So, as it was likely that we wouldn't be able to consider some aspects of the merits of the claim under the s 75 claim due to the LA our investigator didn't consider that aspect of the complaint.
- But we didn't need to because the s.140A complaint was one we could look at under our rules and that it had been referred in time.
- Misrepresentations could be considered under s.140A.
- There was insufficient evidence that misrepresentations had been made in this case.

- There was insufficient evidence that Barclays would have found the loan unaffordable had more searching checks been made at the time it was agreed.

Mr L disagreed that assessment whilst providing no further substantive comment. As things weren't resolved, the complaint was passed to me to decide.

I note that a new case has been opened to consider the issue of commission payments. So, I will not consider that issue in this 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.

My findings on jurisdiction

The s.75 complaint

I have reached the same outcome as our investigator gave in her assessment and for the same reasons (given above). And as neither party has made a post assessment submission to challenge that, I will not comment on it further in this decision. And this pragmatic approach mirrors our remit of providing a fair outcome as a quick and informal alternative to the courts.

The Unfair relationship under s.140A complaint

The event complained of here is Barclays's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mr L. Here the relationship was ongoing until 2024, when the loan was repaid. So, the relationship was still ongoing at the point at which the complaint about the unfairness of that relationship was raised. So, the complaint has been brought in time for the purposes of our jurisdiction.

Merits

The unfair relationship under s.140A complaint

When considering whether representations and contractual promises by P can be considered under s.140A I've looked at the court's approach to s.140A.

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.

Section 56 ("s.56") of the CCA has the effect of deeming P to be the agent of Barclays 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 Barclays were responsible under s.56 when considering whether it is likely Barclays had acted fairly and reasonably towards Mr L.

But in doing so, I should take into account all the circumstances and consider whether a

court would likely find the relationship with Barclays was unfair under s.140A.

What happened?

Mr L says he was verbally misled the system would effectively pay for itself. I've taken account of what Mr L says he was told. I've also reviewed the documentation that I've been supplied.

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 L to be able to understand what was required to be repaid towards the agreement.

But I've seen no evidence that supports Mr L's testimony that he was told the solar panels would be self-funding. In saying that I have noted that no sales document mentions any estimated financial benefits the system may produce.

Overall, while I've carefully considered what Mr L says he was told, given what I've set out above, I'm not persuaded there's sufficient evidence Mr L was misled the system would be self-funding. Therefore, I don't have the grounds to say that Barclays's decision to decline the claim was unfair. And because I make that finding, I also think I have seen insufficient evidence to consider that Barclays have created and benefitted from an unfair relationship with Mr L. I repeat that the commission issue will be looked at under a separate complaint reference.

Our investigator noted, correctly, that the actual productivity of the system appears to have outperformed the estimated annual generation figure provided in the MCS Certificate provided after the installation. So, it seems less likely that Mr L was sold something that was not fit for purpose.

Unaffordable lending

Maybe it is unsurprising that Barclays have been unable to provide much evidence of the checks they completed in 2014. So, it's possible that they could have performed more searching checks on Mr L before agreeing to the loan they provided.

It is equally unsurprising that Mr L has not been able to provide evidence of his income and expenditure, or details of how he was managing his finances, in 2014.

That being so, I have, in any event, seen insufficient evidence to find that Barclays lent irresponsibly to Mr L in 2014. I don't think that Barclays would have, most likely, avoided giving Mr L the loan, had more searching checks been performed in 2014,

Having considered all the submissions that have been made in this case, I have found insufficient evidence to uphold Mr L's complaint.

My final decision

My final decision is that I don't uphold Mr L's complaint about Clydesdale Financial Services Limited trading as Barclays Partner Finance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 24 July 2025.

Douglas Sayers
Ombudsman