

complaint

Mr B complains that Clydesdale Financial Services Limited, trading as Barclays Partner Finance, will not refund to him the money that he paid for a heat pump. His complaint is made against Barclays Partner Finance under section 75 of the Consumer Credit Act 1974.

background

A heat pump was supplied to Mr B under a fixed sum loan agreement with Barclays Partner Finance in August 2013. The price of the heat pump was £16,500. Mr B received some payments under the renewable heat incentive scheme but did not make the electricity savings that he had expected. He complained to Barclays Partner Finance that the heat pump had been misrepresented to him but was not satisfied with its response so complained to this service.

The adjudicator recommended that this complaint should be upheld. He said that Mr B had assured him that he purchased the heat pump because he believed it would provide considerable savings. The adjudicator was persuaded that the advice given about potential high savings led Mr B to enter into the agreement and he could not see any other reason as to why he would agree to such an expensive product. He recommended that Barclays Partner Finance should: cancel the agreement and remove the heat pump at no cost to Mr B; refund the £100 deposit and all monthly payments made to date; and pay interest on those amounts.

Barclays Partner Finance has asked for this complaint to be considered by an ombudsman. It says, in summary, that it has not received enough details of the payments that Mr B has received from the renewable heat incentive scheme and his electricity bills to make a fair assessment of the benefits and costs of the heat pump.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there has been a breach of contract or misrepresentation by the supplier. To be able to uphold Mr B's complaint about Barclays Partner Finance under section 75, I must be satisfied that there has been a breach of contract or misrepresentation by the supplier of the heat pump.

There is little documentary evidence from the time that the heat pump was sold to Mr B. The contract is brief and the loan agreement only sets out the terms of the loan. But this was a substantial investment for Mr B. I do not consider it to be likely that he would have agreed to make that investment unless he was told that there would be financial benefits to him. Those benefits would have been reduced electricity bills and the renewable heat incentive scheme payments. I find it to be more likely than not that the supplier of the heat pump represented to Mr B that he would have lower electricity bills and would receive the incentive payments. The evidence that is available shows that Mr B received the incentive payments but - for reasons that no-one has been able to explain - his electricity bills have increased since the pump was installed. It has been confirmed that the pump has been installed, and is working, correctly.

I am therefore persuaded that the electricity savings were misrepresented to Mr B. I find that he would not have entered into the contract for the supply of the heat pump if those savings had not been misrepresented to him. I find that Barclays Partner Finance is jointly liable for that misrepresentation under section 75. So I find that it would be fair and reasonable in these circumstances for Barclays Partner Finance to: cancel the agreement; remove the pump; and refund to Mr B the payments that he has made for it, with interest. I consider it to be fair and reasonable for Mr B to keep the incentive payments that he has received.

my final decision

For these reasons, my decision is that I uphold Mr B's complaint. In full and final settlement of it, I order Clydesdale Financial Services Limited, trading as Barclays Partner Finance, to:

1. Cancel the fixed sum loan agreement at no cost to Mr B;
2. Arrange for the heat pump to be removed at no cost to Mr B;
3. Refund to Mr B the £100 deposit that he paid for the heat pump and all monthly payments that he has made under the loan agreement;
4. Pay interest on each of the amounts in 3. above at an annual rate of 8% simple from the date of payment to the date of settlement.

If Barclays Partner Finance deducts tax from the interest element of my award, it should send Mr B a tax deduction certificate when making payment. He can then use that certificate to reclaim the tax if he is entitled to do so.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 9 November 2015.

Jarrold Hastings
ombudsman