Complaint

Mr P complains that HSBC UK Bank Plc ("HSBC") has rejected the claim he made under section 75 of the Consumer Credit Act 1974 ("the CCA") in relation to a solar thermal heating system he says was misrepresented to him by the supplier.

Background

I issued a provisional decision in September 2020 concluding that Mr P's complaint should be upheld. I also set out what HSBC should do to put things right. I attached a redacted version of my provisional decision which forms part of this final decision.

I invited further comments from both parties before I reconsidered the complaint for a final time.

Mr P accepted my provisional decision in part. Rather than having the solar thermal heating system removed from his home, he asked if he could keep it.

In response to my provisional decision HSBC said:

- It accepted that the solar thermal heating system had been misrepresented to Mr P by the supplier.

- If the system was working, it considered it disproportionate for the system to be removed entirely.

- It asked if Mr P could provide a copy of his energy bills before and after installation so it could use the actual savings made through the system rather than using the estimate I had suggested.

Following the responses to my provisional decision I wrote to both Mr P and HSBC. I set out that if Mr P were to retain the system, I considered fair compensation to be to:

- Allow Mr P to retain the system.
- HSBC should refund the full cost of the system less 11 years' worth of benefits. I considered this would ensure that Mr P wasn't financially disadvantaged by the misrepresentation made by the installer. HSBC could use Mr P's energy bills, if they were available, to calculate any savings. If they weren't it should use the £77 per year provided in the expert report.
- Refund any transaction paid towards the system on the credit card, with the interest refunded as well.
- Add 8% simple interest from the date the payments were made until the date of settlement.
- Reimburse any other payments Mr P can evidence he paid towards the purchase and installation of the system together with interest at 8% simple per year from the date of the payment until the date of settlement.

Mr P responded to say he accepted the proposed redress and was unable to provide energy bills due to the amount of time that had passed.

HSBC didn't accept that 8% simple interest should be added. It said that due to the time that had passed this represented a "windfall" to Mr P compared to the rate he might have

achieved in a savings account. It felt that it would be more suitable for it to pay interest at 0.2% per year.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to the same overall conclusions as set out in my provisional decision and my subsequent view on what I consider to be fair compensation.

Neither Mr P, nor HSBC, disagree that the benefits of the solar thermal heating system were misrepresented. As a result, the only outstanding issue is what I consider to be fair compensation, in particular the award of 8% simple interest.

HSBC has set out that it feels that 8% simple interest is too high and that a lower rate, in line with what Mr P could have expected to achieve in a savings account with it, would be more appropriate.

Having considered HSBC's view, I remain of the view that 8% simple interest should be awarded. When awarding 8% simple interest, it isn't intended to punish a business. Rather it's to recognise when a consumer, in this case Mr P, has been out of pocket, or deprived, of money and the effect this may have had.

Being deprived of the money may have influenced any decisions Mr P would have made about spending or borrowing over time. HSBC has said that a rate of 0.2% should be used as that's what he could have earned in a HSBC savings account.

But the award of 8% isn't just to reflect any lost opportunities to save or invest. It's also to recognise that he may have had to forego other things he may have needed or wanted such as holidays and other home improvements.

Therefore, I don't think it would be fair for HSBC to pay interest at 0.2% and I'm satisfied that 8% simple interest represents fair compensation in this case.

My final decision

My final decision is to uphold Mr P's complaint. In full and final settlement of it, HSBC UK Bank Plc must:

(a) Allow Mr P to retain the system;

(b) refund the full cost of the system less £77 per year to cover the estimated benefits he has received;

(c) refund any transactions paid towards the system on the credit card, with the interest refunded as well;

(d) add 8%* simple interest to the above from the date the payments were made to the date of settlement; and,

(e) reimburse any other payments Mr P can evidence he paid towards the purchase and installation of the system together with interest at 8% simple per year from the date of the payment until the date of settlement.

*If HSBC UK Bank Plc considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr P how much it has taken off. It should also give Mr P a certificate showing this if he asks for one, so he can claim the tax from HM Revenue & Customs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 January 2021.

Michael Fisher
ombudsman

Provisional decision

Complaint

Mr P complains that HSBC UK Bank Plc ("HSBC") has rejected the claim he made under section 75 of the Consumer Credit Act 1974 ("the CCA") in relation to a solar thermal heating system he says was misrepresented to him by the supplier.

Background

In or around May 2011, Mr P was contacted by a representative of a company I'll call "S" to talk about purchasing a solar thermal heating system ("the system") to be installed at his home. After being visited by a representative of S, Mr P decided to purchase the system and paid a deposit for the purchase on his HSBC credit card. The system was subsequently installed. Mr P says that S told him the system would make substantial savings on his energy bills, and those savings alongside the payments he would receive under the Renewable Heat Incentive scheme ("RHI scheme") would mean the system would pay for itself in 11 years. Mr P says this turned out not to be the case.

S was dissolved in 2016. In January 2017, Mr P, via his representative, made a claim under section 75 of the CCA to HSBC. Mr P said what S told him about the performance of the system and about the RHI scheme were misrepresentations, and it was these misrepresentations that had induced him to enter into the contract with S. On making the section 75 claim to HSBC, Mr P provided the quote for the system he had been given by S, a copy of the letter from S setting out who he should make payment for the system to, and an expert report on the type of solar thermal heating system that had been installed.

In its final response letter HSBC said section 75 didn't apply to this transaction. It said Mr P's contract for the system was with S, but the payment he made on his credit card was to a different company, which I'll refer to as 'G'. Because of this HSBC said the required debtor-creditor-supplier agreement ("d-c-s agreement") didn't exist for the purchase of the system, and it therefore has no liability under section 75.

Mr P wrote back to HSBC and said he had made the payment to G as it is what S had directed him to do. To support this, he pointed to a letter from S which referred to G as the *"installation side of our [S's] organisation".* Mr P said that this demonstrated that there was an arrangement between S and G and therefore there was a valid d-c-s agreement for the purchase of the system.

HSBC maintained its position that section 75 didn't apply to the transaction.

Unhappy with this response, Mr P referred his complaint to this service. One of our investigators looked into his complaint. They concluded, similarly to HSBC, that section 75 didn't apply to the transaction. They said that they could see no link, or association, between S and G and therefore there wasn't the required d-c-s agreement.

Mr P didn't accept the investigator's view. In summary he said:

- The investigator hadn't applied section 12(b) of the CCA to the complaint correctly and there was an 'arrangement' between HSBC and S within the wide meaning of the word.
- There was clearly an 'arrangement' between S and G, otherwise why would S have directed Mr P to pay G.
- S had referred to G as the *"installation side of our organisation"* which again supported that there was an 'arrangement' between S and G.
- Because of the 'arrangement' between S and G, there is a d-c-s arrangement between HSBC and S. Therefore section 75 does apply to the transaction.

To further support his position, Mr P pointed to a number of judgements, as well as provided an example of another consumer who had also entered into a contract with S and had been directed to make their payments to G. In this particular example, the consumer had made a successful claim under section 75 with the financial business accepting that there was a valid d-c-s arrangement.

As an agreement couldn't be reached, the complaint has been passed to me for a decision.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Relevant considerations

I am required to determine this complaint on the basis of what I consider to be fair and reasonable in all the circumstances. When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulator's rule, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In this case the relevant law includes section 75 of the CCA which sets out:

"75. — Liability of creditor for breaches by supplier.

(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor".

The effect of section 75 is that if a consumer has paid for goods or services through an associated credit agreement, and they have a claim against the supplier of those goods or services for misrepresentation or breach of contract, they will also have a like claim against the credit provider. But there are certain conditions that need to be met. The relevant condition in this case is that there needs to be a link between Mr P, HSBC and S – this is the d-c-s agreement – which financed the purchase of the system.

I've taken into account section 12 of the CCA as this defines d-c-s agreements. For this complaint paragraph (b) is the relevant definition:

"12. Debtor-creditor-supplier agreements.

A debtor-creditor-supplier agreement is a regulated consumer credit agreement being—

(a) …

(b) a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier, or

(c) …"

And section 187 of the CCA sets out:

"187. — Arrangements between creditor and supplier.

(1) A consumer credit agreement shall be treated as entered into under pre-existing arrangements between a creditor and a supplier if it is entered into in accordance with, or in furtherance of, arrangements previously made between persons mentioned in subsection (4)(a), (b) or (c).

(2) A consumer credit agreement shall be treated as entered into in contemplation of future arrangements between a creditor and a supplier if it is entered into in the expectation that arrangements will subsequently be made between persons mentioned in subsection (4)(a), (b) or (c) for the supply of cash, goods and services (or any of them) to be financed by the consumer credit agreement.

…

(4) The persons referred to in subsections (1) and (2) are—

(a) the creditor and the supplier;
(b) one of them and an associate of the other's;
(c) an associate of one and an associate of the other's.

(5) Where the creditor is an associate of the supplier's, the consumer credit agreement shall be treated, unless the contrary is proved, as entered into under pre-existing arrangements between the creditor and the supplier".

Section 184 of the CCA sets out:

"184. — Associates.

(1) A person is an associate of an individual if that person is—

(a)the individual's husband or wife or civil partner,
(b)a relative of—
(i)the individual, or
(ii)the individual's husband or wife or civil partner, or
(c)the husband or wife or civil partner of a relative of—
(i)the individual, or
(ii)the individual's husband or wife or civil partner.

(2) A person is an associate of any person with whom he is in partnership, and of the husband or wife or civil partner or a relative of any individual with whom he is in partnership.

(3) A body corporate is an associate of another body corporate—

(a) if the same person is a controller of both, or a person is a controller of one and persons who are his associates, or he and persons who are his associates, are controllers of the other; or
(b) if a group of two or more persons is a controller of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(4) A body corporate is an associate of another person if that person is a controller of it or if that person and persons who are his associates together are controllers of it.

(5) In this section "relative " means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, . . . references to a husband or wife include a former husband or wife and a reputed husband or wife, and references to a civil partner include a former civil partner and a reputed civil partner and for the purposes of this subsection a relationship shall be established as if any illegitimate child, step-child or adopted child of a person were the legitimate child of the relationship in question.

Based on the available evidence it is unclear whether S & G are associates as defined in section 184. Below I have considered the relevant case law to consider if HSBC's view of 'arrangements' is too narrow.

Relevant case law

Mr P has also supplied a number of judgements to support his position that there was an 'arrangement' between S and G, and therefore a valid d-c-s arrangement between S and HSBC for the purposes of section 75.

I have taken account of the following judgements:

- *The Office of Fair Trading v Lloyds TSB Bank Plc and Others* [2004] EWHC 2600 (Comm) ("*OFT v TSB Comm*");
- *The Office of Fair Trading v Lloyds TSB Bank Plc and others* [2006] EWCA Civ 268 ("*OFT v TSB CA*").
- *Bank of Scotland v Alfred Truman (A Firm)* [2005] EWHC 583 (QB) ("*Truman*"); and
- *Marshall v Tesco Personal Finance and Others* (Cardiff County Court, 30 September 2016) (*"Marshall"*).

These judgements consider the issue of what amounts to a valid d-c-s arrangement for the purposes of section 75 of the CCA.

Is there a valid d-c-s arrangement?

When determining whether HSBC is jointly and severally liable with S under section 75 of the CCA, the question is whether the transaction was financed by way of a d-c-s agreement falling within section 12(b) of the CCA.

When Mr P entered into a contract with S for it to supply and install the system, he paid for the deposit for transaction on his HSBC credit card, paying this to G as directed to by S. HSBC submits that Mr P has been unable to establish, and evidence, a link between S and G. And as there isn't a link between S and G, there

cannot be an "arrangement" between S and HSBC. Therefore, HSBC says, section 75 cannot apply as there isn't the required d-c-s arrangement.

HSBC has suggested that to confirm that the required d-c-s arrangement was in place, there would need to be documentary evidence which shows that S and G shared a director or directors. However, after consideration of the relevant case law, I am minded to conclude that the position taken by HSBC is too narrow an interpretation of the word 'arrangements'. I've noted that 'arrangements' aren't defined in the CCA and this point was considered in the case of *OFT v TSB Comm.* The judge said [at para 24]:

"There is no definition of the word "arrangements" in s.189(1) of the Act. Nor do subss.187(1) and 187(2) contain a definition of "arrangements". The second half of each subsection itself uses the word "arrangements" as part of the explanation there set out. But, in my judgment, in its context it clearly betrays a deliberate intention on the part of the draftsman to use broad, loose language. It is to be contrasted with the far narrower word "agreement". In the words of Wilmer L.J. in Re British Slag Ltd's Application, "Everybody knows what is meant by an arrangement". As he also said, where the word is not defined, the draftsman intends that the word should be understood and construed in its ordinary and popular sense".

The judge went on to say [at para 26]:

"In my judgment, in the natural ordinary sense of the word, there are clearly arrangements in place made between the card issuers and the suppliers, notwithstanding the absence of any direct communication between them, or any direct contractual relationship, or even of knowledge on the part of the issuer of the identity of the particular supplier. The fact that there are a number of different arrangements, reflecting the various roles, contractual or otherwise, played by different participants in the network, does not mean that there is not an arrangement in place between the issuer and the supplier. I consider that it is unrealistic to look merely at the individual links in the chain; rather one should stand back and look at the whole network of arrangements that are involved in the operation of the schemes. If one does so, one can, in my judgment, properly conclude that, by virtue of the supplier and the issuer being subject to the rules and settlement processes common to all participants in the card network, there is indeed an arrangement (albeit indirect) between them."

In OFT v TSB CA, the Court of Appeal agreed with the High Court's approach and the judge said [at para 64-66]:

"64. The word "arrangements" is capable of carrying a broad meaning and in a statute which elsewhere displays a high degree of precision in its choice of language must have been deliberately chosen by Parliament with a view to embracing a wide range of different commercial structures having substantially the same effect. The judge relied on In re British Basic Slag Ltd v Registrar of Restrictive Trading Agreements [1963] 1 WLR 727 , particularly the comment of Willmer LJ, at p 739, that "everybody knows what is meant by an arrangement". As she recognised, that case was concerned with very different circumstances under different legislation, so one must be careful not to place too much reliance on it. None the less, as we said earlier, Mr Hapgood had difficulty in resisting the conclusion that even where merchant acquirers are involved there are arrangements in existence between the credit card issuer and suppliers who have agreed to accept its card. Moreover, we find it difficult to accept that Parliament would have been willing to allow some consumers to be disadvantaged by the existence of indirect arrangements when other consumers were protected because the relevant arrangements were direct.

65. In the end Mr Hapgood's argument had to be that by enacting section 187(1) Parliament had cut down what would otherwise be encompassed by the broad wording of section 12(b). However, we are satisfied that the expression "treated as" was used to extend, rather than restrict, the scope of that section; in other words, we accept that it was part of a provision intended to prevent avoidance of its provisions. We think that the natural meaning of those words is to bring within the scope of section 12(b) arrangements that might otherwise fall outside it. If section 187(1)(2) had been intended to define the only kind of arrangements that were capable of falling within section 12(b) we think that the draftsman would have used the word "is" rather than the expression "shall be treated as"…

[…]

66. For all these reasons we are satisfied that an agreement under which a card issuer makes credit available to the cardholder for use in connection with transactions occurring under a four-party structure falls within section 12(b) of the Act with the result that connected lender liability attaches to transactions entered into by the cardholder pursuant to it".

I've also taken into account what the judge said in the case of *Truman* about what constitutes an 'arrangement' for the purpose of section 75.

In *Truman*, the Bank of Scotland sought to recover money paid by it to Alfred Truman, a firm of solicitors, under a merchant services agreement. Alfred Truman acted for a company called Topkarz, which sold cars to members of the public at discount prices. Topkarz had no facility to take credit card payments, so it engaged Alfred Truman to take credit card payments from its customers. Topkarz went into insolvency, leaving its customers without the cars they had purchased. The customers made section 75 claims against their card issuers, which the card issuers paid out. The Bank of Scotland then reimbursed the card issuers and brought a claim against Alfred Truman who argued the customers did not have valid section 75 claims.

The court concluded that the customers did have valid section 75 claims because, although Topkarz had no direct contractual relationship with the card issuers, Topkarz contractual relationship with Alfred Truman gave rise to an indirect relationship between Topkarz and the card issuers which was sufficient to constitute a pre-existing arrangement within the meaning of section 12(b) of the CCA.

The judge in *Truman* said [at para 94-96]:

"94. In the present case the merchant (the firm) and the supplier (Topkarz) are different. This is not a four-party transaction but a five-party transaction and the fifth party, Topkarz, has no contractual or other direct relationship with either the Visa or MasterCard scheme. Instead Topkarz has a contractual arrangement with the firm, as described above. Is that indirect relationship sufficient for the purposes of section 12(b)?
95. Apart from the decision of Gloster J. neither counsel nor I were able to discover another case directly on the point. In my view it does not matter that the card issuers had no direct contractual or other relationship with Topkarz or that the card issuers had no idea of the existence of Topkarz. The firm as merchant was plainly within the scheme and the contractual arrangements between Topkarz and the firm were adequate, in my judgment, to link Topkarz by a spur to the same scheme. As Gloster J. commented (at para 23) the word "arrangements" should be understood and construed in its ordinary and popular sense and there is evidence of a deliberate intention on the part of the draftsman to use broad loose language. It follows that a restricted construction would be contrary to the scheme of this part of the 1974 Act.
96. I am conscious that it ought not to be too easy for a merchant to avoid the chargeback system. If a scheme with a third party supplier allows a merchant to argue that there are no "arrangements" between the card issuer and the supplier, then the card-holder has no rights under s 75 because there would be no debtor-creditor-supplier agreement. An important element of consumer protection would be at risk.
97. However, I recognise that there are a number of problems with my conclusion. Where is the line to be drawn? At what point does the nexus evaporate and a relationship become too tenuous even for the "broad, loose" language of this part of the 1974 Act?
98. In my view this is a problem that will have to be resolved on a case by case basis and is not really susceptible to solution by the application of a statement of general principle. This is how related problems associated with travel agents and the like are resolved. The provider of the services (for example a tour operator) may become insolvent. Whether or not the card issuer (creditor) is liable will depend upon the precise contractual arrangements between the card holder (debtor), the travel agent (merchant) and the provider of services".
So, in considering whether - on the facts of this case - the required d-c-s arrangements existed between the parties, I must give the word "arrangement" its broad and ordinary meaning but take into account the contractual arrangements between S and G to determine whether these would bring G's indirect relationship with HSBC within the scope of section 12(b) of the CCA.

So what was S' arrangement with G? Unfortunately, if there was a written agreement between S and G I have not been provided with a copy. And, as S is now dissolved it's unlikely we could obtain a copy of any such agreement now. However, we have been provided with a copy of S' terms and conditions which make reference to G. These state:

"7b) The Company's personnel are authorised to accept cash, cheque or card payments in favour of [S] or [G], for which a receipt will be supplied."

In my mind this suggests a contractual arrangement between S and G as S' personnel were able to accept payment for goods (supplied by S) made to either S or G, so the two companies clearly had an agreement to work together in some capacity (it would be highly unlikely that a business would agree for payments to be taken by another company if there wasn't an arrangement in place between them). And, by S including this payment provision as part of its general terms and conditions, this shows the practice of G accepting payment on behalf of S for goods supplied by S was a usual part of the business practices between the two companies.

In Mr P's case S specifically directed him to make his payments for the system to G. The letter that has been provided by Mr P says *"We confirm receipt of your deposit of £1,950. The roof payment of £3,880 will be due upon installation of the solar panels, and the final balance of £1,950 will be requested upon completion. Both of these payments should be made payable to [G], the installation side of our [S'] organisation".*

Mr P has also provided this service with an example of another consumer that had entered into a contract with S and had been told to make their payments to G. This again confirms that it was part of S's usual business practice to ask its customers to make their payments to G – Mr P's case wasn't a once-off request.

This consumer, following the installation of their system, experienced technical difficulties. When the consumer contacted S to discuss to discuss the issues, S directed them to contact someone from S' *"installation department".* This person's email address showed that he worked for G. This supports that there was some form of 'arrangement' between S and G.

Taking the above into account, I am minded to infer from the evidence before me that it is more likely than not that there is a contractual agreement between S and G whereby G agreed to accept card payments on the S' behalf in return for being given installation work.

However, even if I'm incorrect in this finding I've taken into account the findings by the judge in the *Marshall* case. In brief, the background to this case was that Mr and Mrs Marshall entered into a contract with Retail Installation Services Limited for it to supply and install solar panels. The payments for this were made with a three separate credit cards, including a Tesco Credit Card. There were subsequent issues with the installation of the solar panels and, as Retail Installation Services Limited had gone into liquidation, Mr and Mrs Marshall made a claim under section 75 of the CCA.

Tesco Personal Finance PLC argued that as the payments on the credit card were made to a company called Trueshopping, there wasn't a valid d-c-s agreement. Mr and Mrs Marshall said they were told by Retail Installation Services Limited to make the payments to Trueshopping as they were *'one and the same'.* But this wasn't the case as there was no corporate relationship between the two companies.

The judge in *Marshall* said [at para 49-50]:

"49. The reality of the present case is that the Claimants agreed to pay £11,999 for the supply and installation of solar panels at their house. They dealt with the First Defendant unaware of the arrangement between the First Defendant and Trueshopping under which the First Defendant solicited the contract with the Claimants and Trueshopping then supplied the solar the solar panels and received payment by credit card. The First Defendant then arranged installation by Caddy. The Claimants became aware of Trueshopping because the First defendant directed them to make payment to Trueshopping. Trueshopping issued the invoice for payment to the Claimants. Trushopping and the First Defendant were working together under an agreement whose precise terms are unknown and were never made known to Claimants but which included an arrangement for payment for the whole of the price of the solar panels and installation by credit card to Trueshopping. Trueshopping had a greater interest in the supply and installation of solar panels to the Claimants than Truman had had in the supply of cars to the customers of Topkarz. I accept Mr MacBean's submission that the factual differences between this case and Truman strengthen rather than weaken his submission. If there were arrangements between the creditor and Topkarz in Truman, as Judge Hughes QC concluded, there is no basis upon which I can distinguish that decision on the facts and say that there were no arrangements in the present case between the Second Defendant and the First Defendant.

50. I therefore conclude that the nexus between the supplier (First Defendant) and the creditor (Second Defendant) is not too tenuous to be described as an arrangement. It is at least as close to the relationship in Truman."

Taking into account the relevant judgements I have already referred to, I'm satisfied that there was a pre-existing arrangement between the supplier, S, and the creditor, HSBC, within the meaning of section 12(b) of the CCA.

So, unless further information changes my mind, I conclude that HSBC has not acted fairly in declining Mr P's section 75 claim on the basis that there was no d-c-s agreement in place for the transaction to purchase the system from S. I will therefore go on to consider whether S did make misrepresentations to Mr P in relation to the system and whether HSBC should therefore be liable under section 75.

Was there a misrepresentation?

For Mr P to have a claim for misrepresentation he needs to satisfy two criteria. The first is that there was a false statement of fact by the supplier, S. The second is that the false statement (or statements) induced Mr P to enter into the contract with S to purchase the system when he otherwise wouldn't have done so.

When Mr P made his section 75 claim to HSBC in January 2017, he said there were a number of oral and written misrepresentations made to him by S that induced him into entering the contract to purchase the system. The written statements, and Mr P has provided documentary evidence to support these, were:

- that the system would achieve 'payback' i.e. pay for itself, in 11 years,
- that the estimated returns from the RHI scheme would be £3,559 within 10 years and these would rise to a total amount of £12,821 within 25 years of the installation,
- that he would save around £3,843 on his energy bills over 10 years, rising to £36,140 within 25 years; and,
- that the returns generated by the system would be the equivalent of a financial investment giving an annual return of £509 in the first year, rising to an average 9.495% over 20/25 years.

Mr P has said that these written misrepresentations were supported by oral misrepresentations that included:

- the total savings he would make on his energy bills and payments through the RHI scheme would be sufficient to recoup the cost of the system, £7,780 within around 10 years of the date of installation,
- the system would be maintenance free; and,
- under the RHI scheme he would benefit by a total amount of £18,088 over 20 years.

Instead, Mr P has said that there have been no significant savings on energy bills and that the system isn't paying for itself within the time he was led to believe.

I've considered all the information that Mr P provided when he made his section 75 claim to HSBC in 2017. These included a handwritten quotation provided to Mr P by S, the contract between Mr P and S for the system, a document called "*Solar Thermal Performance Calculations"* and a survey report that was carried out on his home.

The handwritten quotation and the *"Solar Thermal Performance Calculations"* were provided to Mr P before he entered into the contract with S to explain the benefits of the system to him. Both show the same figures. Under the column called *"Estimated Returns from Renewable Heat Incentive"* it shows that in year one Mr P would make a fuel saving of £199, rising to an overall saving of £18,088 by year 20. Alongside this there is a column called *"RHI Payment"* and this shows that in year one Mr P would receive a payment of £310 rising to an overall payment of £8,342 by year 20. This document then goes on to show that the payback year would be year 11.

I'll consider the savings Mr P was expected to make through installation of the system first. Whilst I accept that the figures S provided in the above documents were estimates, it does set out that Mr P would have expected to make significant fuel savings on an annual basis. The documents also support what Mr P says S told him about the energy savings that would be made by installing the system prior to him entering into the contract.

Mr P submits that the system did not provide the fuel savings that S told him it would. To support his position, Mr P has provided an independent report from a specialist. This report is based on Mr P's property and has used the UK Government's approved methodology to assess the energy efficiency of existing properties.

The independent report states that given Mr P's particular circumstances (i.e. five people living in the home), he could expect to save about £77 a year and would mean, based on energy savings only, it would take Mr P 100 years to recoup the cost of the system.

The report also goes on to consider any maintenance costs involved in the upkeep of the system. The report says that there is very little maintenance required with the system, but some periodic maintenance is required. The report goes on to say that the maintenance cost equates to between £70-£150 a year, which would eliminate any energy savings that were being made.

I have carefully considered Mr P's testimony and the independent report, and I'm satisfied that the system did not, and could not, save Mr P the amount of money on his energy bills that S claimed it would. I therefore find that the potential energy savings that could be expected from the system were misrepresented by S.

I've also considered the payments S told Mr P he would receive under the RHI scheme. Mr P says although he does not dispute that the RHI scheme wasn't guaranteed when the sale took place, that the language used in the sales documentation and by S weren't sufficient to make him aware that the scheme wasn't guaranteed, that there could be initial costs and that the maximum benefit, and length of the scheme, could be less than he had been led to believe. Mr P says S told him these payments would mean that the system would pay for itself within the 11 years stated on the quotation.

My understanding is that the RHI scheme for domestic properties didn't come into force until 2014, around three years after Mr P's system was installed. When it came into force, the RHI scheme would make payments for a seven-year period, not the 20 year period that Mr P had been told by S. Therefore, the maximum financial benefit that Mr P could have received under the scheme would have been significantly less than he had been led to believe by S when he entered into the contract.

To qualify for the RHI scheme, Mr P's home had to meet certain criteria. This included having cavity wall insulation as well as a certain depth of loft insulation. Mr P says his home didn't meet the criteria to qualify for payments under the RHI scheme and that this would've been an additional expense he would have to have incurred in order to comply, increasing the overall payback period of the installation. And even if his home had qualified, the expected income that Mr P would've received over the 7 years would've been around £1,200. Significantly less than the £8,342 he had been led to believe.

Mr P paid £7,780 for the system and has said that the salesperson for S told him that the benefits wold mean that the system would pay for itself over 11 years. Based on the available evidence it would take over 85 years for the system to pay for itself. I'm of the view that it was the misrepresentation by S, of the savings and income that could be made with the system and that it would pay for itself within 11 years.

I therefore find that the payments Mr P would receive under the RHI scheme if he installed the system were misrepresented to him by S.

Mr P has said that it was the above factors that induced him to enter into the contract with S. Considering all the information and evidence that has been provided, I'm satisfied that without the misrepresentations that he would make significant savings on his energy bills, receive significant payments through the RHI scheme, the system would pay for itself within 11 years and would be maintenance free that Mr P wouldn't have entered into the contract.

Fair compensation

I consider that there were misrepresentations on the part of S and that Mr P would not have entered into the contract with it for the system but for these misrepresentations. In deciding what would be fair compensation, I consider that my aim should be to put Mr P back in the position he would've been in but for the misrepresentations by S.

As section 75 of the CCA means that Mr P has a like claim against HSBC in respect of the misrepresentations of S, I'm minded to ask HSBC to refund the total price Mr P paid for the system, together with 8% simple interest per annum from the date of the payment to the date of settlement. I will allow HSBC to take account of the benefit that Mr P has received from the system when calculating fair compensation. Mr P has confirmed to this service that he didn't register his system to receive payments under the RHI scheme so for ease I consider it fair to use the expert's estimate of £77 per year.

My provisional decision

Subject to any further submissions I receive from either party by 22 October 2020, my provisional decision is that this complaint should be upheld.

I'm minded to require HSBC UK Bank Plc to:

(f) arrange for the system to be removed from Mr P's property and make good any damage caused at no cost to him;

(g) refund the full cost of the system less £77 per year to cover the estimated benefits he has received;

(h) refund any transactions paid towards the system on the credit card, with the interest refunded as well;

(i) add 8%* simple interest to the above from the date the payments were made to the date of settlement;

(j) reimburse any other payments Mr P can evidence he paid towards the purchase and installation of the system together with interest at 8% simple per year from the date of the payment until the date of settlement; and

*If HSBC UK Bank Plc considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr P how much it has taken off. It should also give Mr P a certificate showing this if he asks for one, so he can claim the tax from HM Revenue & Customs.

Michael Fisher
ombudsman