

The complaint

Mr N is unhappy with the response of Clydesdale Financial Services Limited (trading as Barclays Partner Finance), following a claim against it under Section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

Mr N was approached by a company that supplied and installed solar panel systems. I'll refer to this company as "P". Following a meeting, Mr N agreed to enter into a contract with P for it to supply and install a solar panel system costing £8,505.00. To fund this purchase, Mr N also agreed to enter into a 10-year fixed sum loan agreement with Barclays Partner Finance ("BPF").

Mr N made a claim under Section 75 ("s75") of the CCA through his representative. The representative said that P had made several verbal misrepresentations to Mr N about the solar panel system that had induced him to enter into the contract. It also said there had been several breaches of contract. In summary, the points the representative made were:

- P had told Mr N that the system would pay for itself within the term of the loan and would cost him nothing. But it would take over 11 years for the cost of the solar panel system and the loan amount to be paid off.
- The system would require no maintenance over its 25-year lifetime whereas it was likely that the inverter would need to be replaced at least once during the lifetime of the system at a cost of around £1,000.
- The solar panels breached several MCS requirements. These included the panels being installed too close to the roof's edge, no fire warning notice and the original order form showed an estimated figure of 5,600kwh which was overinflated.

To support its position on the quality of the installation, the representative also supplied an independent report that highlighted the above issues.

To put things right, the representative asked BPF to:

- Repay all sums under the credit agreement, write-off the outstanding balance and reimburse any interest or charges applied to the account.
- Cover the cost of removing the solar panel system and putting right any damage caused because of the installation or removal.
- Reimburse the costs of the independent report obtained by Mr N.
- Add 8% interest to all sums

In its final response letter, BPF said they couldn't comment on the verbal representations made by P but because his solar panel system hadn't performed in line with P's estimations they would reduce Mr N's loan balance by £4,553.50 and give him £500.00 as a goodwill gesture.

BPF thought that it would be reasonable for Mr N to be aware that the solar panel system would require some level of maintenance or repair over its 25-year lifetime. It also didn't think that the installation of Mr N's solar panel system had breached the MCS requirements by being installed less than 450mm from the roof's edge. They did agree that the fire warning labels should be applied to Mr N's system and agreed to send him a cheque for £8.00 to cover the cost of printing out these documents himself.

Unhappy with this, Mr N referred his complaint to our service.

During our investigation BPF changed its thoughts on Mr N's complaint and looked to make an offer to put right the misrepresentations by P. It said:

- It had calculated the potential savings and income to Mr N from the solar panels over the 10-year term of the loan. If it reduced the overall cost of the loan to this amount, then the panels would in effect be cost neutral, and Mr N would not have suffered a financial loss as a result of any misrepresentation. However, when BPF carried out this calculation it found that the 10-year benefit was higher than the amount Mr N had already paid, taking into account the £4,553.50 reduction made to Mr N's loan account. So, as Mr N had paid far less than the benefit he'd receive from the system over 10 years, BPF didn't think there was anything further it needed to do.
- BPF had also arranged for its own expert to attend Mr N's home, with his permission, to inspect the solar panels. BPF reviewed this information and the comments of a further solar panel expert and concluded that it couldn't confirm whether the solar panels had been specifically designed to be installed close to the roofs edge without carrying out a more invasive survey.
- BPF would arrange and pay for Mr N's system to have the correct labelling.
- It offered to pay Mr N £300 for the trouble and upset caused.

One of our investigators considered whether the offer from BPF was fair. She thought that BPF's calculation showed that Mr N wasn't experiencing a financial loss from P's misrepresentations and so overall, the offer was a fair one.

Mr N didn't accept the offer from BPF. In response he said:

- BPF's expert hadn't inspected the solar panel system thoroughly and that it needed a proper inspection.
- The suggestion that he'd had adequate compensation was wrong. His FIT payments shouldn't have been considered in BPF's calculation as his solar panel system is not producing what was originally quoted by P.
- He has damaged underlay not picked up by either inspection.

Another one of our investigators looked at Mr N's response and said that BPF agreed that Mr N's solar panel system was not producing along the lines of P's quote but that the calculation confirmed Mr N's benefits would be greater his costs by year seven. She also explained that the problem with Mr N's underlay was a new issue and would need to be

raised with BPF directly, it wasn't something the Financial Ombudsman could comment on as part of this complaint.

Mr N responded to say that his independent report was being ignored and greater weight was being put on the views of BPF's expert.

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

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.

Relevant considerations

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, 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 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit. It states:

"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 the 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."

As Mr N paid for the system with a fixed sum loan agreement, BPF agrees that section 75 applies to this transaction. This means that Mr N could claim against BPF, the creditor, for any misrepresentation or breach of contract in the same way he could have claimed against the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

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

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.

Mr N says he was approached by P and during a sales meeting told that the solar panel system would be entirely self-financing. Neither Mr P nor BPF dispute that the benefits of the solar panel system were misrepresented. As a result, this decision will deal with what I consider to be fair compensation.

Self-funding offer

The role of this service is to help settle disputes between consumers and businesses providing financial services fairly and reasonably with minimum formality. In cases like this one, determining fair compensation isn't an exact science. My role is to arrive at a fair and reasonable outcome taking account of the circumstances.

I've considered whether it would be fair for BPF to arrange for the removal of the solar panels from Mr N's home and refund him all payments he had made toward the loan; minus any benefits he had received. Here, I don't think it would be fair or proportionate to require the removal of the solar panels from his home due to the misrepresentation. Rather, I think fair compensation is to try and make sure that Mr N doesn't suffer a financial loss due to the misrepresentation which, in my view, would mean that the solar panel system would be cost neutral over the 10 year loan term. By allowing Mr N to keep the panels, I'm satisfied that he will likely benefit from lower electricity bills and FIT payments going forward.

Mr N has settled his loan with BPF, and due to the reduction applied to the loan account, his total costs have been £6,959.45. BPF's calculation worked out that over ten years Mr N's solar panel system would likely produce a benefit to him of £10,405.60.

I've carefully considered the methodology BPF has submitted to this service to calculate the total benefits of the system. This methodology is based on the actual performance and estimated future performance of Mr N's solar panel system.

To calculate the actual performance of Mr N's solar panel system, BPF used his FIT statements and electricity bills. BPF has also outlined that when calculating the estimated future performance of Mr N's solar panel system, it used a number of assumptions. Having considered these, I'm satisfied that the assumptions that have been used by BPF provide a fair and reasonable basis for calculating fair compensation.

Taking the above into account, I'm satisfied that Mr N's system is cost neutral over the term of the loan and that what BPF has done puts Mr N in a fair position.

Quality of the installation

Both the expert report for Mr N and the report completed by BPF confirm that the quality of the installation wasn't to the standard that Mr N should have expected from P and BPF has offered to arrange having a fire warning label installed to Mr N's system.

The report provided by Mr N's representative set out that, based on a visual inspection, the solar panels had been installed too close to the roof's edge. The report obtained by BPF, also a visual inspection, agreed that the panels were installed very close to the roof edge. BPF then arranged for both reports to be reviewed by a further solar panel expert.

The expert said:

"What's being asked here is a challenge and is unlikely to result in a definitive answer so need to manage expectations. To determine if the installation has been undertaken correctly in this context:

- I'd need to undertake a fresh wind uplift calculation for each property taking into account the edge zone (this is easy)*
- Determine which roof fixing hooks have been used because each fixing hook has a maximum upward force it can resist before it breaks/deforms etc.*
- It's then possible to calculate the necessary number of roof hooks that should have been used to withstand the maximum calculated wind uplift on the array of solar panels*
- Count if at least that number of hooks are present*
- Assess if each hook has been fixed to the roof timbers in accordance with the manufacturer's instructions (e.g. correct type of screws used etc).*
- Assess if the rest of the mounting system (rails, clamps) etc are secure and nothing's worked loose (this is easy).*

The main challenge is 2. Above identifying the manufacturer/type of roof hook that has been used because they rarely have the manufacturers name or model marked on them and there is potentially hundreds of them which can all look similar (I attach a picture). To check if they've been fixed correctly is also a challenge because if I can't identify the manufacturer, I can't then identify the exact type of fixing screw that should have been used from the manufacturer's instructions."

Having reviewed all the reports submitted, there is no dispute that the panels are fitted close to the roofs edge. However, the second report from BPF makes it clear that that provided the correct fixings are used, panels can be safely and securely fixed to the roof close to the edge.

Taking into account the information above, I can't conclude that the solar panels have been installed too close to the roof's edge as it isn't clear whether the panels have been designed to be installed as close as they have been

The MCS guidance explains that:

Unless specifically designed to do so, systems should be kept away from the roof perimeter. For a domestic roof, a suitable minimum clearance zone is around 40-50cm. The requirement to keep an arrays away from a the edge of a roof is suggested because: wind loads are higher in the edge zones; keeping edge zones clear facilitates better access for maintenance and fire services; taking arrays close to the roof edge may adversely affect rain drainage routes; and when retrofitting systems, there is the potential for damage to ridge, hip, valley or eaves details.

I've also taken into account that the panels were installed over seven years ago and no damage or instability has been confirmed. I think it is more likely than not that any adverse impact of the panels' installation, or failing of the installation, would have become evident by now. And it hasn't.

Taking into account the information above, I can't conclude that the solar panels have been installed too close to the roof's edge as this isn't something that can be confirmed by a visual inspection, and may not be proven even by the full removal of the panels.

Therefore, I won't be asking BPF to take any further steps about the issue of the closeness of the solar panels to the roof's edge.

In summary, I'm satisfied the work that BPF has agreed to arrange and carry out to make Mr N's solar panel system compliant with MCS guidelines is fair.

Ongoing maintenance costs

I've looked at the current information available from the Energy Savings Trust. It says that solar panels don't need a lot of maintenance but that the inverter will need replacing "sometime" during the lifetime of the panels at a current cost of about £800.

I accept that Mr N could have some maintenance and repair costs over the lifetime of the solar panels. The proposed approach to put things right for Mr N is to make the solar panels cost neutral over the original term of the loan. Based on what Mr N has paid and his expected benefits Mr N is highly likely to enjoy significant benefit from the solar panel system by way of savings and the FIT income going forward.

Based on the available information I'm satisfied that the potential benefit will more than cover any future maintenance costs. Therefore, I'm not persuaded that BPF should make an award for maintenance and repair costs.

Distress and inconvenience

I'm satisfied that BPF's offer of £300 adequately compensates Mr N for the delays in uphold his claim.

My final decision

My final decision is to uphold Mr N's complaint. In full and final settlement of it, Clydesdale Financial Services Limited, must:

- arrange, and pay for, the required repair work as it has offered to bring the installation of the solar panel system in line with MCS guidelines,
- pay Mr N £300 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 28 April 2022.

Sarah Holmes
Ombudsman