

The complaint

Mrs P complains about Bank of Scotland plc trading as Halifax (“Bank of Scotland”)’s response to a claim she made under Section 75 of the Consumer Credit Act in relation to a solar panel system (“the system”).

What happened

On 10 July 2013, Mrs P purchased the system from a supplier. She partly paid for this using a credit card provided to her by Bank of Scotland – giving her protection under Section 75. She paid off her credit card in full each month so paid no interest on the amount borrowed.

In June 2019, a claims management company (“the CMC”) wrote to Bank of Scotland to say that Mrs P wanted to claim under Section 75 about misrepresentation of the system by the supplier, which had told her the benefits of the system would cover its cost within ten years. The letter did not include any evidence in support of the claim, or to show that Mrs P had authorised the CMC to make the claim on her behalf. Bank of Scotland replied to ask for such evidence before it would consider the claim.

The CMC wrote back to Bank of Scotland with a new letter of claim, which said the supplier had told Mrs P the benefits of the system would cover its cost within eight years, so it was a better investment than putting her money in an ISA. The CMC enclosed a letter of authority from Mrs P, which was signed and dated on 30 August 2019, along with some evidence in support of the claim.

Bank of Scotland responded to say that the claim was made too late, bearing in mind the provisions of the Limitation Act – which gave a consumer six years to make such a claim. So, Bank of Scotland rejected the claim.

Unhappy with Bank of Scotland’s response, Mrs P asked the Financial Ombudsman Service to look into what had happened. Mrs P told our investigator that she purchased the system as an investment, having been told that the benefits of the system, through Feed-In Tariff income and savings on her electricity bills, would cover the purchase price within eight years. And that, even though she was disappointed with the benefits that were realised, she didn’t think there was any point in raising her concerns and wouldn’t have known who to complain to because the supplier had gone out of business.

Our investigator didn’t think the complaint should be upheld, because there was some inconsistency in the claim made, the supplier had remained in business for four years after installation and she would’ve expected Mrs P to contact it if she’d had concerns in that time, and there had been no loss as the system would likely have paid for itself within ten years anyway.

The CMC disagreed with this on Mrs P’s behalf. It said that the evidence showed the system had not paid for itself within ten years. And Mrs P had been told it would do so within eight years anyway. That the inconsistency between the letters of claim should be ignored, since the first letter was just a holding letter and its contents should not be relied on – Mrs P

having confirmed to the investigator what her recollection was, and that matched the actual (second) letter of claim.

Since the complaint has not been resolved, I've been asked to make a decision. I issued a provisional decision explaining why I was not planning to uphold the complaint, which differed slightly to the reasons given by the investigator. Mrs P did not respond by the deadline I gave. Bank of Scotland responded to say it had nothing to add and accepted my provisional 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.

In line with my provisional decision , I've decided not to uphold this complaint.

Limitation Act

Bank of Scotland's Limitation Act defence to the claim seems to be reasonable.

There is nothing to confirm that the CMC had the legal authority to make a claim on Mrs P's behalf when it sent the first letter of claim, dated 25 June 2019. The time limit on making such a claim means that Mrs P only had until 10 July 2019 to make the claim, this being six years after the sale took place.

From the evidence available, it appears that the CMC only obtained authority to bring the claim on 30 August 2019 when Mrs P signed the letter of authority. This means it could not have made a claim on her behalf before that date. So, I don't think that Mrs P made a claim within the six years allowed.

However, I do think that Bank of Scotland ought to have thought about Section 140 of the Consumer Credit Act as well, which deals with unfair relationships. Bearing in mind that, when considering whether a relationship is unfair, a Court will take into account negotiations and arrangements by a supplier for which a lender was responsible under Section 56. That could make a misrepresentation or misleading or false statement by a supplier important in considering if a relationship was unfair.

Misrepresentation

I do not think there was a misrepresentation on the part of the supplier which means that Bank of Scotland should've accepted Mrs P's claim.

Mrs P purchased the system as an investment, on the basis the system was projected to pay for itself within 8 years. That would be an average return on investment of 12.5% per year over eight years. That return hasn't been realised.

But there would only be a misrepresentation – making a Section 75 claim successful – if an untrue statement of fact by the supplier had caused Mrs P to enter the contract when she otherwise would not have done so. I'd only say that was the case if the supplier had unreasonably overestimated the benefits – such as by using unreasonable assumptions about Feed-In Tariff or electricity unit rates, or inflation. And that if the supplier hadn't done that, and had given more reasonable information about the benefits, Mrs P would not have gone ahead with the purchase.

I've calculated what I think would be a reasonable estimate of the benefits the system would provide – using what I think are reasonable assumptions, as follows:

- Starting FIT rates of
 - 14.9p per kWh for generation
 - 4.64p per kWh for export
- Starting electricity unit rate of 14.48p (UK) to 15.28p (Cardiff) per kWh
- Inflation rates of
 - RPI 4.2% per year
 - Electricity 7.8% per year

based on FIT and electricity unit rates at the time of sale and average inflation rates over ten years prior to the sale, sourced from ONS and BEIS data, available online –

<https://www.gov.uk/government/statistical-data-sets/historical-electricity-data>

<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/czbi>

This shows that the supplier could reasonably have said the system would pay for itself after around ten years. That is longer than what Mrs P remembers being told. But if she'd been told the system would pay for itself after ten to twelve years rather than eight, I think she would still have purchased the system. That would be an average return on investment of between 8% and 10% per year. At the time, that would've still been a good investment return given that average Cash ISA interest rates in 2013/2014 were less than 2% per year.

<https://www.thisismoney.co.uk/money/saving/article-2527041/Savings-rates-fallen-dramatically-2013-whats-store-2014.html>

So, it does not appear to me that there was an untrue statement of fact by the supplier that induced Mrs P into the purchase. Although the supplier said something that was arguably not reasonable, if it had provided more accurate (or more reasonable) information, I think Mrs P would still have made the purchase.

Unfair relationship

I've also thought about whether a Court is likely to conclude the relationship between Bank of Scotland and Mrs P was unfair on her given the provisions of Section 140 of the Consumer Credit Act.

The supplier may have misled Mrs P in terms of the likely benefit of the system. But more reasonable information about the potential benefits of the system – and how long it would take to pay for itself, would not have been so different such that, in my opinion, it would make Mrs P's relationship with Bank of Scotland unfair on her. So, I think it is unlikely that a Court would conclude the relationship was unfair.

Summary

Overall, given my findings above, I do not think that Bank of Scotland acted unreasonably when it rejected Mrs P's 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 Mrs P to accept or reject my decision before 26 July 2024.

Phillip Lai-Fang

Ombudsman