

The complaint

Mr W has complained that Omni Capital Retail Finance Limited rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr W bought solar panels for his home in 2018. The purchase was funded by a loan from Omni Capital, and that business is therefore liable for the acts and omissions of the installer under the relevant legislation. In this case, that relates to the installer allegedly misleading Mr W into believing that the panels would be self-funding, which they weren't.

Mr W's complaint was considered by one of our adjudicators. They thought that the benefits of the panels were mis-represented to Mr W, and that fair redress would be for the loan to be restructured to make the panels cost no more than the benefit they would provide over a ten-year period (the term of the loan). This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Omni Capital didn't agree. It felt the Mr W's allegations (made via his representatives) were contradictory, generic, and unsubstantiated. It said that this was a considered purchase by Mr W which he actively pursued. He didn't make a complaint until over two years after installation and didn't mention the complaint to the installer, even when it attended the property to fix a fault in August 2020. The system has generated electricity as expected, and Mr W has benefitted from FIT payments and savings on his electricity bills.

Because agreement couldn't be reached, I've been asked to make a decision on the complaint.

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.

Omni Capital is familiar with all the rules, regulations, and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach. So, I don't consider it necessary to set all of that out in this decision.

Having carefully considered everything provided, for the same reasons as those explained by the adjudicator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place. Mr W was told the solar panels would be self-funding within the term of the loan, and he was not given clear information to demonstrate that would not be the case. Had he realised the net costs to him over the term of the loan, I don't think he would've bought the solar panels.

So, I think that Omni Capital didn't treat Mr W fairly and he lost out because of what Omni Capital did wrong. And this means that it should put things right.

I've thought about what Omni Capital has said, but I'm not persuaded to change my decision. Mr W says he saw an advert on social media which enticed him to enquire further by entering his contact details, which he did. He says it was not clear to him that the contact from the installer was as a direct result of this – the installer didn't explain where it had got his details from – which is why he felt he'd been cold called. He was not specifically looking to purchase solar panels until the installer persuaded him to do so.

Mr W says he had some health issues between installing the solar panels and Spring 2020. At that time, when he was feeling better, he reviewed his finances looking for areas he could cut back on spending. It was then he realised the solar panels weren't generating the expected benefits and were not self-funding. Shortly after this he engaged his representatives to make the complaint on his behalf. He was advised by his representatives to complain to Omni Capital and not to the installer. He left it for his representatives to pursue this, which is why he didn't raise the issue with the installer, even when they attended his property.

The solar panels do appear to be generating electricity in line with the estimate shown on the installation certificate. So, the issue is not that they aren't performing as expected in terms of generating electricity. The issue is that Mr W was told the solar panels would be self-funding, in effect paying for themselves over the course of the loan term. He was not provided with anything clearly comparing the costs and benefits of the system indicating a shortfall which he would have to meet himself (which may have made me think he was not told it was self-funding). And the solar panels, despite generating the expected amount of electricity, do not appear to be self-funding in the way he was told they would be. So, overall, on the balance of the evidence available, I'm satisfied that it is more likely than not that there was a misrepresentation and that this complaint should be upheld.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr W's complaint for Omni Capital to put things right by recalculating the original loan based on the known and assumed savings and income to Mr W from the solar panels over a ten-year period so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

In the event the calculation shows that Mr W is paying (or has paid) more than he should have, then Omni Capital needs to reimburse him accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr W by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require Omni Capital to restructure Mr W's loan. It should recalculate the loan to put Mr W in a position where the solar panel system is cost neutral over a ten-year period.

Normally, by recalculating the loan this way, a consumer's monthly repayments would reduce, meaning that they would've paid more each month than they should've done resulting in an overpayment balance. And as a consumer would have been deprived of the monthly overpayment, I would expect a business to add 8% simple interest from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr W have the following options as to how he would like his overpayments to be used:

- A. the overpayments are used to reduce the outstanding balance of the loan and he continues to make his current monthly payment resulting in the loan finishing early,

- B. the overpayments are used to reduce the outstanding balance of the loan and he pays a new monthly payment until the end of the loan term,
- C. the overpayments are returned to Mr W and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr W and he pays a new monthly payment until the end of the loan term.

If Mr W accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

If Mr W has settled the loan, Omni Capital should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mr W has settled the loan by refinancing, he should supply evidence of the refinance, to Omni Capital and Omni Capital should:

1. Refund the extra Mr W paid each month with the Omni Capital loan.
2. Add simple interest from the date of each payment until Mr W receives his refund.
3. Refund the extra Mr W paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr W receives his refund.
5. Pay Mr W the difference between the amount now owed and the amount he would've owed if the system had been self-funding over a ten-year period.

I'm satisfied that there was sufficient information available at the time that Mr W first contacted Omni Capital that means the claim should have been upheld. I direct that Omni Capital should pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr W's complaint. Omni Capital Retail Finance Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 May 2022.

Phillip Lai-Fang
Ombudsman