

The complaint

Mr M 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 M bought solar panels for his home in 2017. The purchase was funded by a loan from Omni, 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 misleading Mr M into believing that the panels would be self-funding, which they weren't.

Mr M stopped making repayments and fell into arrears on the loan shortly after the solar panels were installed. He asked for the loan to be cancelled and the solar panels to be removed. The debt was passed by Omni to a debt collection agency who contacted Mr M during the course of our investigation.

Mr M's complaint was considered by one of our adjudicators. They thought that the benefits of the panels were mis-represented to Mr M, 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 the seven-year 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 made an offer of settlement which was not in line with what the adjudicator said. As an agreement couldn't be reached the case was passed to an ombudsman.

Mr M was glad that the adjudicator thought the complaint should be upheld but would prefer the loan to be written off.

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.

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 and Mr M was not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for him.

Omni's offer of settlement is not in line with our usual approach in this type of case, and I do not think it represents a fair and reasonable outcome.

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

I set out below how Omni should put things right. This will, in effect, make the solar panels self-funding in the way Mr M understood they would be. After the seven years, Mr M will keep the solar panels and any ongoing benefits they provide.

I did consider whether the loan was unaffordable and should be written off. But, I don't think that would be a fair and reasonable outcome. Based on the information provided to Omni when Mr M applied for the loan, I don't think it was reasonably foreseeable that Mr M would be unable to keep up with his repayments so soon afterwards.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr M's complaint for Omni to put things right by recalculating the original loan based on the known and assumed savings and income to Mr M from the solar panels over a seven-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.

Mr M's system was not registered for the feed-in tariff (FIT) scheme, so he has not received any FIT payments. That scheme is now closed to new entrants so Mr M cannot register for it or receive FIT payments in the future. As such, and given I haven't seen anything that shows Mr M was clearly told he had to register for the scheme, I don't think it would be fair for FIT payments to be taken into account when Omni calculates the benefits of the solar panels.

In the event the calculation shows that Mr M is paying (or has paid) more than he should have, then Omni 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 M by way of explanation.

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

I am aware that Mr M is in arrears on his loan so there may be few if any overpayments that were made.

In this case, given that Mr M is in arrears and has been unable to make the contractual monthly repayments, I think the fairest resolution would be for any overpayments to be used to reduce the outstanding balance of the loan and for Mr M to pay a new contractual monthly repayment until the end of the loan term. This will ensure his contractual monthly repayment is at the lowest level possible.

In the even that Mr M is unable to make the new contractual monthly repayment he should inform Omni of this and work with them to find a way forward.

Mr M may also want to consider obtaining free impartial debt advice from a charity such as Citizens Advice (0800 240 4420), National Debtline (0808 808 4000) or StepChange (0800 138 1111).

I'm satisfied that there was sufficient information available at the time that Mr M first contacted Omni that means the claim should have been upheld, and that further trouble and upset was caused to Mr M by being contacted by a debt collection agency during our investigation. So, I direct Omni to pay £250 compensation directly to Mr M.

My final decision

For the reasons I've explained, I'm upholding Mr M'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 M to accept or reject my decision before 25 April 2022.

Phillip Lai-Fang
Ombudsman