

## **The complaint**

Mr D has complained that Hitachi Capital (UK) Plc (“Hitachi”) rejected his claim against it under section 75 of the Consumer Credit Act 1974 in relation to his purchase of some solar panels.

## **Background**

Mr D bought solar panels for his home in October 2013. He paid a deposit of £4,000, and the balance was funded by a loan from Hitachi, 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 D into believing that the panels would be self-funding, which they weren’t.

Mr D’s complaint (in which he is represented by a claims management company) was considered by one of our adjudicators. He thought that the benefits of the panels were misrepresented to Mr D, and that fair redress would be for the loan to be restructured to effectively make the panels self-funding during the eight year term of the loan. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions about future performance.

Hitachi accepted that the panels had been mis-sold, but it objected to the recommended compensation because Mr D had sold his house a couple of years after buying the panels, and so it argued that he had chosen to forego the future benefits of the panels during the remainder of the loan term. Hitachi said it would not be fair to make it pay Mr D for the panels during a period in which he no longer had them. It proposed that instead, it should only have to pay Mr D enough to make the panels self-funding during the period for which he had them.

Mr D’s representative asked for more compensation than the adjudicator had recommended, because it was likely that if the panels had performed as expected then Mr D would have got a better price for the house.

Our adjudicator did not agree with either party, and so the case was referred for an ombudsman’s decision.

## **My findings**

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Hitachi and Mr D's representative are 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.

It is no longer in dispute that the panels were mis-sold, so I uphold this complaint. The only issue left for me to consider is what would be fair compensation on the facts of this case – specifically, what difference it should make, if any, that Mr D moved house before the end of the loan term, leaving the panels behind.

I think the point made on Mr D's behalf that he might have got a better sale price for the house if the panels had been performing better is a bit too speculative. I have no way of knowing if the buyers knew how well the panels were performing, or if they realised that the panels were not meeting Mr D's expectations, or if they even cared about the panels at all.

I have considered Hitachi's argument, but I am not persuaded by it either. It's true that it was Mr D's choice to sell his house and to forgo the future benefit of the panels, while he still has to make his loan payments. But the house sale is not the real reason he will be out of pocket. He would never have had the loan and the panels in the first place if the panels had not been misrepresented to him at the point of sale (and the house would still have been sold). So any financial detriment to him is, first and foremost, the result of the misrepresentation, for which Hitachi is liable; the house sale is incidental.

In these circumstances, I do not think it would be fair to ask Hitachi to calculate compensation by making allowance only for the actual returns Mr D received whilst he owned the property in question. The fact he independently chose to move a couple of years after the sale of the solar panels, not to take them with him (which would be impractical and expensive), and therefore receive no further return from the panels is not something it would be fair to ask Hitachi to take into account in the circumstances.

### **Putting things right**

So, having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr D's complaint for Hitachi to put things right by recalculating the original loan based on the known and assumed savings and income Mr D would have received from the solar panels over the eight year term of the loan if he had not moved house, so that he pays no more than that. (This calculation must of course take into account the £4,000 deposit he paid.)

If the calculation shows that Mr D is paying (or has paid) more than he should have, then Hitachi need to reimburse him accordingly. (Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with him by way of explanation.)

If the calculation shows there is a loss, then where the loan is ongoing, I require Hitachi to restructure the loan. They should recalculate the loan to put Mr D in a position where the solar panel system is cost-neutral over the eight year loan term.

Normally, by recalculating the loan this way, Mr D's monthly repayments would reduce, meaning that he would have paid more each month than he should have done, resulting in an overpayment balance. And as he would have been deprived of the monthly overpayment, I would expect a business to add simple interest at 8% a year from the date of the overpayment to the date of settlement. So I think the fairest resolution would be to let Mr D 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 D and he continues to make his current monthly payment resulting in his loan finishing early, or
- d) the overpayments are returned to Mr D and he pays a new monthly payment until the end of the loan term.

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

If Mr D has settled the loan, Hitachi should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with interest at 8% a year.

If Mr D has settled the loan by refinancing, he should supply evidence of the refinance to Hitachi, and then Hitachi must:

1. Refund the extra Mr D paid each month with the Hitachi loan.
2. Add simple interest from the date of each payment until Mr D receives his refund.
3. Refund the extra Mr D paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr D receives his refund.
5. Pay Mr D the difference between the amount now owed and the amount he would have owed if the system had been self-funding.

I'm satisfied that there was sufficient information available at the time that Mr D first contacted Hitachi that means the claim should have been upheld. I direct that Hitachi must pay £100 compensation for the inconvenience caused.

### **My final decision**

For the reasons I've explained, I'm upholding this complaint. Hitachi Capital (UK) Plc must put things right in the way I've set out above.

Hitachi must pay the compensation within 28 days of the date on which we tell it that Mr D has accepted my final decision. If it pays later than this, then it must also pay simple interest on the compensation at 8 percent a year from the date of my final decision to the date of payment.

If Hitachi considers that it is required by HM Revenue & Customs to withhold income tax from the interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate. Mr D should refer back to Hitachi if he is unsure of the approach it has taken, and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 30 March 2022.

Richard Wood  
**Ombudsman**