

## **The complaint**

Ms J is unhappy with the outcome of her Section 75 Consumer Credit Act 1974 (the 'Act') claim against Omni Capital Retail Finance Limited trading as Omni Capital, for some allegedly mis-sold solar panels.

## **What happened**

Ms J is represented by a firm of solicitors. She bought a solar panel system from a supplier ('S') in October 2017. S has since gone out of business. The system was financed by a £6,500, 84-month, fixed term loan from Omni. With interest, the total payable by Ms J over the 7 years of the loan was to be just under £9,000.

Ms J says that she was told the solar panel system would pay for itself. At the time of the sale she was provided with a solar quotation which estimated she'd achieve benefits of around £1,018 a year. This was set out in a table that showed how the benefits would be applied to an example 10-year loan with similar monthly payments to Ms J's. This indicated that the panels would effectively pay for themselves by year 11.

Within a couple of years of having the panels, Ms J realised that they weren't producing the income that she'd expected. And she was struggling to pay the monthly payments. So, she refinanced the loan with a bank and paid the Omni loan off early.

Ms J brought a complaint to Omni claiming that the benefits of the panels had been misrepresented to her. She says she would never have bought them had she known they wouldn't produce the income that she expected. As compensation, her solicitors requested that the loan be recalculated to make it self-funding. They also asked for £1,500 toward the costs of a replacement inverter - that she hadn't been told would have to be replaced at some point - and £500 for the distress and inconvenience she'd been caused.

Omni didn't accept Ms J's claim. Despite her solicitors responding to challenge this, Omni didn't reconsider the claim, nor did it open a complaint, despite a clear indication of customer dissatisfaction. So, Ms J's solicitors brought her complaint to this Service.

Our investigator thought the complaint should be upheld. And she recommended that the loan be made self-funding over a 10-year period, simple interest at 8% a year be paid on any overpayments and Ms J get £100 compensation for the trouble and upset she'd been caused.

Omni didn't agree. So, the matter was passed to me for a decision. In advance of this final decision, I issued a provisional decision. Ms J's solicitors responded to that by sending me a copy of some of the refinance information. This showed that the third-party bank loan, that Ms J had taken out to re-finance the Omni loan, had subsequently been re-financed again, two years later, as part of a re-mortgage of Ms J's property. There is still more information to come over from the solicitors about the first bank loan. But that can be provided to Omni in due course to enable it to do the calculations required for the redress that I shall be awarding.

Disappointingly, Omni didn't respond to 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 my provisional decision I said: *'Both Ms J's solicitors and Omni are aware of our approach to solar panel mis-sale complaints. So, I don't intend to set it out in detail here. There appears to be no dispute that Section 75 of the Act applies to Ms J's purchase from S. And under Section 56 of the Act, Omni must take responsibility for any misrepresentations made by S.'*

*I'll start by saying that I appreciate why Omni was concerned about the evidence in this complaint and the conflict between some of the content in Ms J's witness statement and what had been said by the solicitors in their letter of claim. Quite clearly there is an element of templates having been used here and that does tend to confuse the facts.*

*However, I need to balance up all the evidence and am required to reach my findings on what is more likely than not to have happened. Whilst I have Ms J's testimony, the most persuasive evidence that there was a misrepresentation is the sales quotation itself. In that, Ms J is told that she will receive income of over £1000 a year. The Feed-in-Tariff (FIT) and export payments estimated in the quotation were much less than this – around £240 – and no indication is given as to where the balance of the savings were to be achieved. Electricity savings were never going to be another £770 odd. But nonetheless, Ms J is told that she'll be getting £1,018 a year from the panels.*

*The quotation itself is quite generic and talks about a 4 kW solar panel system generating 3,568 kWh a year. Ms J's MCS certificate predicts she'll get 3,132 kWh a year. So, it's not that different from the example given. And the FIT readings that I've been provided don't appear to indicate that the system isn't performing as expected. So, I think Ms J was entitled to expect that this quotation had been tailored to her circumstances. And that means that the loan table was important in terms of her expectations of the returns she could receive.*

*Ms J has unsurprisingly found that the panels haven't produced an income anywhere near the £1,000 a year she was led to expect. So, it's my finding that there was misrepresentation here. That statement was clearly untrue and she does appear to have relied on it when deciding to make the purchase.*

*I've looked at the loan comparison table in the quote and have considered the increases in benefits that were also predicted over subsequent years (through energy price inflation, etc). Those show that Ms J's £9,000 liability to Omni, had the loan run to term, would be paid off over 8 years. So that's the period that I've found she was more likely than not told by S would be needed to self-fund the cost of her panels.*

*I appreciate the discrepancies in the evidence. But memories do fade, and I think Ms J's*

*solicitors could have presented her case a little better. But that doesn't take away from the fact that the representations made in the quote were misleading. And I've found that Ms J wouldn't have bought these panels had she known these were incorrect.*

*Upon learning that the panels were producing nowhere near the savings expected, Ms J decided to re-finance her loan. I understand that she did this through a bank. I haven't been provided with any details of the new loan taken out, how much interest it involved, whether the whole amount borrowed was used to pay off the Omni loan, how much has been paid and indeed whether or not anything is still outstanding on it. In response to this provisional decision, Ms J's solicitors should please send me those details as they are relevant to the redress that I will be awarding. A copy of the loan agreement and a full statement showing all repayments made should be provided too. These will be given to Omni to calculate the redress.*

*When we look at complaints involving re-financing, it's our usual approach to require that the lender consider any principal, interest and charges on that new loan when calculating any overpayments the customer has made. That's because her payments for that loan are also a loss that Ms J will suffer because the panels weren't self-funding as she was told they would be. The refinancing was done to reduce the cost of the loan to Ms J, so it's only fair and reasonable that this is taken into account in the calculations, in the same way any principal or interest she would otherwise have paid to Omni would have been. So, the principal, interest and charges that Ms J has paid need to be included in Omni's calculation as to whether any overpayments have been made on this loan. The details that I've asked Ms J's solicitors to provide should enable Omni to do this.*

*Like our investigator, I consider that the most appropriate redress here is for the loan to be made self-funding. That way Ms J will only pay the same amount for the panels as that which she receives in benefits from them. Given my findings above that Ms J was likely told that the panels would be self-funding over 8 years, that's the period that it is fair and reasonable for Omni to use in calculating the benefit of the panels to Ms J. Omni should use the actual FIT and electricity use figures that are available and, where they are not, the standard assumptions that we apply for these types of case. That may include a 37% assumed electricity use.*

*I know that the solicitors have suggested in their claim letter a different method to that which we usually require to make the panels self-funding. But I don't think it's appropriate for me to change the standard approach that we use for these types of complaint. Many claims management companies have suggested different methodologies are used. And each financial services business does it slightly differently. But with the number of these complaints being handled by both the businesses and our service, it's just not appropriate that we consider applying different methods of calculating redress unless there is a compelling reason in an individual case to do so. I haven't found any such compelling reason here.*

*Ms J has not had the use of the money that she will have overpaid for the panels for the last few years. So, I will also be requiring that Omni pay her simple interest at 8% a year on any overpayments until such time as they're refunded.*

*Ms J will also have been upset and inconvenienced by Omni's rejection of her claim when it's one I think should have been upheld. For that I shall be awarding her £100 compensation.*

*Ms J's solicitors have asked that she be compensated for not being told that the inverter would at some point need replacing during the lifetime of the panels. I don't think that's appropriate. There's no evidence that the inverter has failed, nor that it will during the apparent 10-year warranty given by S in this case. If it is to fail, given S is no longer around, then that's something that Ms J would be able to raise with Omni at the time. But in any event, if the inverter is to fail after the end of the warranty, I consider that the benefits that Ms J will continue to get from the panels after the 8 years have passed, should be more than enough to pay for any maintenance required. So, she shouldn't be out of pocket.'*

Having heard back from Ms J's solicitors, I've considered the information about the re-financing loans that they've provided. That information doesn't change my provisional findings, which I adopt in full in this final decision. But I will clarify the redress below, given the existence of a further re-financing of the bank loan used to pay off the Omni loan.

The Omni loan was paid off in October 2019 and I'm satisfied that Ms J took out a loan with her bank for £7,000 to do that ('Loan 2'). £5,041.06 of Loan 2 appears to have been used to pay off the Omni loan. So, it's any interest and charges on that amount that Omni will need to use to calculate the redress.

Ms J subsequently re-mortgaged her home in May 2021 and part of that loan (Loan 3) was used to pay off Loan 2. When considering redress in complaints like Ms J's, we'll generally only require the business to take into account the first re-finance (here Loan 2) when calculating the additional cost to the customer. Here I'm satisfied that Loan 2 was taken out specifically to re-finance the Omni loan and to reduce the interest rate Ms J was paying because it wasn't self-financing as she'd expected.

Ms J subsequently re-mortgaged her home and I expect she did this to fix the rate of interest she was paying for that. But the predominant reason for taking out that loan won't have been because the solar panels weren't self-funding - by far the bulk of Loan 3 will have been used for other purposes. So, it's not appropriate that I require that Omni incorporate any interest and charges on Loan 3 in the redress payable here.

So, Omni need only consider the cost to Ms J incurred through Loan 2 when calculating the redress that I've set out below. And when calculating that, it only need use the principal, interest and charges applicable to the portion of Loan 2 that Ms J used to repay the Omni Loan - £5,041.06.

### **My final decision**

It's my final decision to uphold this complaint. I require that Omni Capital Retail Finance Limited trading as Omni Capital do the following:

- Recalculate the original loan based on the known and assumed savings and income to Ms J from the panels over an eight-year period, so she pays no more than that;
- Allow Ms J to keep the solar panel system;
- Refund Ms J any overpayments made on the Omni loan, together with 8% simple interest\* a year on those amounts from the date that they were paid until when they're refunded;
- Refund Ms J any overpayments that she's paid on the proportion of Loan 2 that she used to pay off the Omni loan, together with 8% simple interest\* a year on those amounts already paid from the date that they were paid until when they're refunded;

- Pay Ms J the difference between any amount she owed on Loan 2 when it was re-financed by Loan 3 and any amount she would still have owed at that time if the system had been self-funding over an 8-year period; and
- Pay Ms J £100 compensation for the distress and inconvenience caused.

\*Omni may be required by HM Revenue & Customs to deduct tax from any interest paid. Should Ms J request it, Omni should provide her with a statement of the tax deducted so that she can reclaim this if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 11 May 2022.

James Kennard  
**Ombudsman**