

The complaint

Mr K is unhappy with the outcome of his claim against Omni Capital Retail Finance Limited under Section 75 of the Consumer Credit Act 1974 (the 'Act') for some allegedly mis-sold solar panels.

What happened

In November 2017, Mr K bought a solar panel system from a supplier that I'll call 'IS'. He financed the purchase through an £8,300 seven-year fixed term loan from Omni. He was to pay this back at approximately £135 a month. Over the last couple of years, because of the pandemic, Mr K has been in financial difficulty, so has been making a reduced monthly payment.

Mr K has told us that he was approached by IS' salesman through a cold call at his door. The salesman told him that the solar panels would not only be an environmentally friendly addition to his house but wouldn't cost him anything. He said that they would produce a monthly Feed-in-Tariff (FIT) income of £125 - and a £50 government grant each month as well. So, with a loan cost of £135, the panels would more than pay for themselves.

A few days after Mr K agreed to the purchase, the fitters turned up and said there had been a mistake with the calculations. So, they couldn't fit the original number of panels intended. So, Mr K ended up with less panels than he expected. But he says that he was told he'd get the same FIT income.

The evidence indicates that it was at this point, on 19 November 2017, that a new quotation was generated for the smaller solar system. Rather than the £8,400 that the originally quoted system would cost, the new system would be £7,800. As the loan was for more than that, IS said that Mr K would be given the £500 difference back.

Mr K first complained to IS in 2019, as he thought that the panels can't have been working properly, given the income he had received was much less than had been promised. IS sent someone out to Mr K's home to inspect the panels. Some alterations were made as the panels weren't performing quite as expected - this was thought to be because of some shading from a chimney. But Mr K remained unhappy as the panels still weren't giving him the income that IS' salesman had led him to believe he'd receive.

Mr K complained to Omni. It couldn't initially deal with his complaint within the eight weeks allowed, so it gave Mr K referral rights to our service. Omni ultimately sent its final response to the complaint in January 2020. It didn't uphold the complaint and said it didn't have sufficient information from Mr K to consider whether there had been a mis-sale and to calculate if there had been any loss.

So, Mr K came to our service. Whilst the complaint has been with us, Mr K started experiencing financial difficulty. And he's also said that the panels are making a noise that was making it difficult for him to sleep. Despite our investigator requesting that Omni arrange for IS to send someone to inspect the system, this is yet to happen. And IS initially wanted Mr K to pay £200 plus VAT for them to come out, as they said the panels were out of

warranty.

Our investigator thought that Mr K's complaint should be upheld. And she recommended that the panels be made self-funding over a 10-year period. She also recommended that an engineer be sent to inspect the solar system and that 8% interest be added to any overpayments that Mr K had made. She also said Mr K should be paid £100 compensation for the distress and inconvenience he'd experienced.

Omni didn't agree with our investigator's opinion. It thought that the finance agreement was clear on the cost of the loan. And that the quotation Mr K had received indicated his income would be much less than the monthly repayments. It said there was no evidence that Mr K had been told anything else by the salesman and that his recollection wasn't enough. It did, however, appear to agree that the panels should be inspected.

Omni requested an ombudsman's decision. And the matter came to me. In advance of this final decision, I issued a provisional decision to the parties in which I said that I intended to uphold the complaint. My findings are set out below. Mr K responded to say that he was happy with the decision. I didn't hear back from Omni, other than to request additional time to arrange an inspection. I denied this request as I considered that any inspection could take place after my final decision had been issued. And there was no reason to keep Mr K waiting any longer.

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:

'I'll start by saying that I am very disappointed that Omni hasn't accepted that there was more likely than not a misrepresentation by IS' salesman here. Omni will be aware from previous complaints we've dealt with, as well as decisions of mine, that the salesman involved in this sale had his employment terminated by IS because he was making false statements to customers. So, as a starting point, I would have expected it to have taken Mr K's word for what he'd been told. Mr K has been consistent throughout in his testimony that the panels would be self-funding. He's even told us exactly how much the salesman said he'd get. So, I've found that misrepresentations were more likely than not made to Mr K.

IS are acutely aware of the problems with this particular salesman. And it's very telling that one of Mr K's complaint letters to IS has a handwritten note on the top. In it the IS writer asks for the standard response for another customer's similar complaint (the name on which looks very much like one I upheld at decision) to be sent to Mr K. That response letter was just a denial that anything had happened.

I appreciate that there is a quotation document here that sets out the expected monthly return on the system, the first year's estimate for FIT, export and electric saving being about £365. But I've found that the quote was given to Mr K after he'd already agreed to buy the panels, following a cold call from the salesman a few days before. He only got the quotation document after it was realised that the original number of panels sold couldn't be fitted to his roof. So, the number of panels and contract price was reduced. Mr K says he was, however, told the benefits that he'd get would be the same. I have no reason to doubt this and I have found that he wouldn't have bought these panels but for what he'd been told by the salesman. He had no reason to look at a quotation again after he'd agreed to the purchase.

Omni are aware of our approach to solar panel complaints like Mr K's. So, I don't intend to

set out everything that we usually consider in this decision. Suffice to say that Omni are responsible under Sections 56 and 75 of the Act for any misrepresentations made by IS' salesman. In the circumstances of this case, I've found that Mr K was more likely than not told that the panels would pay for themselves over the seven-year term of the loan. The figures he was given by the salesman would have achieved this. And I don't consider that he would have bought the panels or taken out the loan had this not been the case.

I've looked at the panels' performance. On the limited information that we have available, the panels do now appear to be generating electricity as was predicted in the MCS certificate. The estimated generation was 2,608 kWh a year and the panels are performing at just under 2,500 kWh a year. The performance expected can only ever be an estimate, given it is dependent on sunlight conditions which are variable. And the generation appears to be within a reasonable tolerance of those predictions.

Mr K is receiving FIT and export payment income, as well as electricity savings from the energy generated that he uses at home. But this is at nowhere near the level he was led to expect by the salesman. Mr K would like the panels removed and his loan cancelled.

When considering compensation, this isn't an exact science. And there's no set redress that we must apply. In Mr K's case, the panels do appear to be working, although I accept that the system is making a disturbing noise. Like our investigator, I think that Omni should arrange for an engineer to go out and inspect this, fixing anything that they find to not be working correctly – including sorting out the noise. I note that IS have been out once already in 2019 to look at the panels. And they did make some changes which appears to have resulted in their performance improving. But at the very least, the noise that they're making now isn't normal. And that needs to be investigated.

Regarding the cost of the panels, whilst I note that Mr K would like his loan cancelled and the panels removed, that would I think be disproportionate in the circumstances of his complaint. The panels do appear to be working and will continue to generate electricity and bring Mr K savings and income over their expected 25-year lifespan. FIT and export income is paid for 20 years and the electricity savings will continue so long as the system continues to function. When determining compensation, we don't look to make the misrepresentations true. Instead we provide that the finance company should ensure that the customer doesn't lose out because of those misrepresentations.

In Mr K's case, I've found that he was told the panels would pay for themselves over the term of the loan and that's what I will be requiring Omni makes happen. By making the system self-funding, it will be cost neutral for Mr K as he'll only pay for the panels what he receives in benefits and income from them. In that regard, I'll require that Omni restructure his loan so that he pays no more than the benefits he'll get from the panels over the seven-year term of the loan.

In calculating those benefits, it should use the known performance of Mr K's system as well as the standard assumptions it has agreed with our service for how it will perform going forward. I'll also require that it calculates any overpayments Mr K has made and that it applies these to the loan. It will also need to calculate and apply simple interest at 8% a year to those overpayments to reflect Mr K's loss of use of that money. This should similarly be applied to the loan.

I was sorry to hear that Mr K has found himself in financial difficulty during the pandemic. But it's good to see that Omni appears to be treating him positively and sympathetically and has agreed an affordable payment plan with him. In terms of the options for the repayment of the restructured loan going forward, I would ask that Mr K let's Omni know which of the options I've set out below he would prefer. But that these should only take effect when Mr K and

Omni agree that his financial position is such that he is again able to recommence paying the higher amount.

As I said above, I'm disappointed that Omni didn't recognise this as a complaint that should be upheld. Mr K will clearly have been upset and inconvenienced by Omni's rejection of his claim. Most of the original upset is however down to IS' salesman's actions. And I can't hold Omni responsible for that here. But I do think Omni should pay Mr K £200 for the additional distress and inconvenience it has caused Mr K.'

Neither of the parties has said anything that makes me think I should change my provisional findings. So, I am adopting them in full in this final decision.

My final decision

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

- Recalculate Mr K's loan so that he pays no more than the known and assumed savings and income that he will receive over its seven-year term;
- Allow Mr K to keep the solar panel system;
- Arrange for an engineer to inspect Mr K's system to check that it's working correctly and fix anything required, including the cause of the noise that Mr K says it's making;
- Calculate any overpayments that Mr K has made on the loan and apply these to his restructured loan account together with simple interest* on those payments at 8% a year from the date he made them until they're applied to the restructured loan;
- Give Mr K the following options as to how he'd like to make his future repayments, although only implement this when it's agreed that Mr K is again in a financial position to make them:
 - The overpayments are used to reduce the outstanding balance of the loan and Mr K continues to make his original monthly payment resulting in the loan potentially finishing early, subject to the effect of any underpayments he's made; or
 - The overpayments are used to reduce the outstanding balance of the loan and Mr K pays a new lower monthly payment over the original term of the loan, subject to the effect of any underpayments he's made; and
- Pay Mr K £200 for the distress and inconvenience he's been caused.

*HM Revenue & Customs may require that Omni deduct tax from any interest that it pays Mr K. If Mr K requests it, Omni must provide him with a certificate showing how much tax has been taken off so that he can reclaim it if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 13 May 2022.

James Kennard
Ombudsman