

The complaint

Mr A has complained that JAJA FINANCE LTD rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr A bought solar panels for his home in 2017. Mr A paid for part of the cost using his credit card, provided by JAJA, 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 A into believing that the panels would pay for itself in about 8 years. Mr A says the benefits are insufficient to achieve this.

Mr A says the installer did not provide finance to cover the cost of purchasing the solar panels. So, Mr A took out a personal loan with another provider to pay the remaining cost of the solar panel installation. He says the installer helped him fill in the application and assured him that the benefits of the solar panels would cover the loan repayments.

JAJA responded to the complaint to say it needed further investigation. It asked for Mr A to have the system inspected by a relevant expert who could establish whether the system was performing as expected. Mr A was unhappy with this and so he referred the complaint to the Financial Ombudsman Service.

Mr A's complaint was considered by one of our investigators. They thought that the benefits of the panels were mis-represented to Mr A, 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. This should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

JAJA then made an offer of settlement. Mr A's representative asked for details of how JAJA had calculated its offer. However, JAJA then reconsidered the matter, withdrew its offer of settlement, and asked for an ombudsman to make a decision in this case.

I issued a provisional decision explaining that I was planning to uphold the complaint and setting out how JAJA should put things right. Neither JAJA nor Mr A had any further comments, but Mr A did provide some further documents to help JAJA calculate the settlement, which we have forwarded to JAJA.

As there was nothing further for me to consider, my findings have not changed, and this decision is in line with 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.

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice;

and, where appropriate, what I consider to have been good industry practice at the relevant time.

In this case the relevant law includes section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

In this case Section 75 applies to JAJA because Mr A used his credit card to pay for part of the cost of the solar panels (£1,750.00). JAJA agrees that section 75 applies to this transaction. This means that Mr A can claim against JAJA, the creditor, for any misrepresentation or breach of contract by the installer in the same way he could have claimed against P, the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Section 75 does not appear to apply to the loan taken with another provider (albeit I cannot make a binding decision about that as part of this complaint). The lender did not provide the loan specifically to purchase the solar panels or pay the installer directly. Rather the loan was paid directly to Mr A and he could have used this for anything he wanted. So, while I accept that his intention was to use that loan to pay the remaining cost of the solar panels, it appears there is not the required supplier, debtor, creditor relationship that would mean that loan is covered by Section 75.

Section 56 of the Act is also relevant. This is because it says that any negotiations between Mr A and the installer, as the supplier, are deemed to have been conducted by the installer as an agent of JAJA.

For the purpose of this decision I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

Key documents

I think the key document in this case – which clearly sets out what Mr A was told – is the quote provided by the installer dated 24 January 2017. This was for the solar panel system, including battery storage and a hot water diverter. The total cost quoted was £12,850.00.

What Mr A was told about the system

The quote included the following estimates of the first-year benefit that the system would provide:

- Feed-In Tariff generation £206.58
- Feed-In Tariff export £156.92
- Electricity saving £488.18
- Total solar income and savings year 1 £905.68
- Battery storage £345.81
- Hot water diverter £181.50

What this means:

- The generation tariff is paid for each unit of electricity the system generates.
- The export tariff is paid for each unit exported to the grid – unless there is a separate meter to record this, the assumption is that 50% of the generated electricity is exported.
- Electricity savings are the cost of the generated electricity that is used by the

customer, rather than buying this from the customer's electricity supplier. Many installers used an assumption that 50% of the electricity generated would be used by the customer, given that 50% was assumed to be exported to the grid.

- Battery storage would generate additional electricity savings as, rather than exporting excess electricity to the grid, it is stored in the battery and used at times when the system is not generating electricity, rather than buying electricity from the grid.
- A hot water diverter uses excess electricity to heat water in a hot water tank rather than letting it be exported to the grid. This could save on electricity or gas costs, depending on the type of hot water system at a property.

In the end, Mr A only paid £11,750.00 for the installation, because it was found that the hot water diverter was not suitable for his home. So, the solar panels and battery storage were installed.

From this quote, Mr A appears to have understood that the total benefit of the system in year one would be £905.68. While this amount does not match up with the other figures given in the quote (the Feed-In Tariff and electricity savings quoted actually total £851.68, with the battery storage providing a further £345.81 in savings – a total of £1,197.49), I think that the evidence supports what Mr A has said. That he was told the benefit of the system in the first year was going to be £905.68.

The quote does not provide information about how these figures were calculated. For example, it doesn't show the estimated annual generation of the system, or the unit prices for the FIT generation and export tariffs or the electricity unit price that Mr A was assumed to pay his electricity supplier.

Performance of the system relative to the quote

I can see from the Micro-generation Certificate Scheme (MCS) certificate that the system is recorded as being expected to generate 2,383 kWh per year. That being the case, I would expect the quoted benefits to be achieved (within a reasonable margin of error) if the system was generating about that amount of electricity.

The FIT statements provided show that the system has actually generated:

- 2,715 kWh in year one.
- 2,897 kWh in year two.

So, in terms of electricity generated, the system is generating between 14% and 21% more electricity than estimated – it is performing better than expected.

FIT income

However, the FIT statements show that Mr A has received the following payments under the FIT scheme:

- Year 1 income £179.91.
- Year 2 income £199.93.

This is significantly less than the FIT income of £363.50 in the first year that was indicated on the quote. I think this suggests that the assumptions used on the quote were unreasonable or significantly exaggerated – whether that be the amount of electricity the system would generate, or the FIT unit prices used. I think that amounts to a misrepresentation on the part of the installer.

Electricity savings

The electricity savings are a bit harder to quantify, as electricity prices change over time and depend on which supplier and tariff the customer chooses. However, at the time of sale the installer could get accurate usage and unit price information from the customer by requesting sight of a recent electricity bill. And where this is not available, I would expect an installer to make a reasonable assumption about the electricity unit price. But in this case I don't think either of these things has happened.

At the time of sale, Mr A was paying his electricity provider 14.946p per kWh. If we assume that he would use 50% of the electricity generated by the system, this gives an actual saving of £202.89 in year one and £216.49 in year two – based on the actual electricity generated by the system.

At the time of sale, using the information on the MCS certificate, the saving would've been only £178.08. so, it is clear that the estimate given on the quote is significantly exaggerated and is not reasonable or realistic. Again, I think this is a clear misrepresentation, as I can't see any way the system that was installed could reasonably be expected to lead to such savings.

What I've decided

Bearing in mind the misrepresentations set out above, and that Mr A says he wouldn't have purchased the solar panels if these misrepresentations hadn't been made, I have decided to uphold this complaint.

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

JAJA's comments

JAJA has made a couple of points in explaining why it withdrew its initial offer and now does not think this complaint should be upheld.

The first was relating to the Energy Performance Certificate. However, I do not think this is relevant to the sale. This is a generic document that contains information about a property's energy use, typical energy costs and recommendations about how to reduce energy use and save money. It makes assumptions based on a typical user of energy, rather than the actual usage of a customer. So is not specific to Mr A's energy usage.

I think the quote provided by the installer is more relevant to the sale, given it contained information and estimates specific to the system that was being installed. While the information in the quote about the benefits of the system is an estimate rather than a guarantee, I think this estimate ought to have been reasonable and not exaggerated or misleading.

The second point JAJA made was that it had requested, and Mr A had not agreed to provide, an independent inspection of the system to determine if it was performing as expected or if there was some issue that could be repaired. But I think the evidence provided is sufficient to determine that the system has been performing better than expected and as such there is no performance issue. Rather, I think the issue is that the estimated benefits in the quote provided to Mr A at the time of sale were misleading or exaggerated.

As such these points have not led to me changing my decision, which is that this complaint should be upheld.

Putting things right

I have decided that it would be fair and reasonable in all the circumstances of Mr A's complaint for JAJA to put things right by calculating the known and assumed savings and income to Mr A from the solar panels over a ten-year period.

It should then calculate how much Mr A has actually paid (or will pay) for the system including credit card interest, loan repayments made on his personal loan and any settlement amount if that loan is ongoing (Mr A has provided statements from the loan provider, and confirmed he's made the contractual repayments to date).

Mr A should provide a redemption statement or settlement figure from his loan provider if the loan is ongoing so JAJA can see the current amount required to settle the loan.

In the event the calculation shows that Mr A has paid (or will pay) more than he should have, then JAJA needs to reimburse him the overpayment, adding interest at 8% simple per year for the time he has been without that money.

Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr A by way of explanation.

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

Explanation of the redress

I've decided the redress should be calculated over a ten-year period, rather than the eight years that Mr A said he thought the system would pay for itself in. This is because I need to ensure the redress is fair and reasonable to both Mr A and JAJA. The estimated income shown on the quote wouldn't have been sufficient to pay off the cost of the system even before adding loan interest. So, I'm not sure that this is exactly what he was told.

Because Mr A can expect to benefit from the solar panels (through energy saving and Feed-In Tariff payments) for 20 years, I think a ten-year period is reasonable when calculating the redress. In this specific case, I do not think a shorter period would strike the appropriate balance in terms of fairness.

Assumptions to be used in the calculation

The following assumptions should be used when calculating the known and assumed savings and income from the solar panel system:

System installation date: 7 February 2017

FIT unit rates per kWh (taken from Mr A's FIT statements):

- Installation to 31 March 2017
 - Generation £0.0411
 - Export £0.0491
- 1 April 2017 to 31 March 2018

- Generation £0.0411
 - Export £0.0503
- 1 April 2018 to 31 March 2019
 - Generation £0.0439
 - Export £0.0524
- 1 April 2019 to 31 March 2020
 - Generation £0.0439
 - Export £0.0538

Following this, both FIT unit rates should be adjusted in line with by RPI on 1 April each year, and for future dates a reasonable assumption for the inflation rate can be made.

Electricity unit rate per kWh (taken from Mr A's electricity bills):

- Installation to 22 April 2018
 - £0.14234
- 23 April 2018 to 26 March 2019
 - £0.1237
- 27 March 2019 to 29 August 2020
 - £0.1416
- 30 August 2020 to 16 September 2021
 - £0.1413
- 17 September 2021 to 23 January 2022
 - £0.1704

For dates, including future dates, where the electricity unit price is not known, JAJA can make a reasonable assumption about electricity price inflation. Mr A has provided some further electricity bills showing the actual unit rates he was paying, the unit prices for which I have included above.

The self-consumption rate (used to calculate electricity savings) should be 50%. This based on Mr A's electricity statements,. These show that in the year prior to installation of the system, his electricity usage from the grid totalled 4,784 kWh. And in the year following installation his usage was 3,365 kWh.

I think the difference of 1,419 kWh is likely to be a fair reflection of the amount of electricity that Mr A used from the solar panels (bearing in mind this would've been aided by the presence of the battery storage). While this amount is slightly more than half of the 2,715 kWh generated by the solar panel system in that time, I'm mindful that the presence of the solar panel system may not be the only factor in why Mr A's usage was reduced. Nevertheless, it seems reasonable to assume it was the main factor, particularly as I'm not aware of any other changes in how Mr A was using electricity at that time.

The amount of electricity generated by the solar panels each year can be assumed to decrease by 0.5% per year.

My final decision

For the reasons I've explained, I'm upholding Mr A's complaint. JAJA FINANCE LTD 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 A to accept or reject my decision before 10 June 2022.

Phillip Lai-Fang
Ombudsman