

Complaint

Mr M has complained that Mitsubishi HC Capital UK Plc trading as Hitachi Capital Consumer Finance ("Hitachi") rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

Background

Mr M bought solar panels for his home in 2014. The purchase 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 M into believing that the panels would be self-funding, which they weren't.

Hitachi didn't agree that the panels had been misrepresented to Mr M but made a, *without admission of liability* offer in order to bring the case to a resolution. This offer wasn't accepted by Mr M as he felt it didn't fully compensate him for his losses.

Mr M's complaint was considered by one of our adjudicators. She 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 effectively make the panels self-funding. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance. She further explained that Hitachi's offer was not in line with our established approach to redress in these types of cases.

Hitachi didn't agree so the case was passed to an ombudsman.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Hitachi is 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.

I understand Hitachi feels the estimated returns from the solar panels were made clear to Mr M and from the evidence it can see, the solar panel system has performed in line with the estimates made by the installer. It further adds that the documentation doesn't specify the solar panels will be self-funding.

As explained by our adjudicator, Mr M says he was told the solar panels would be self-funding verbally, and Mr M's testimony has been consistent throughout. And while there is an estimated returns document, it does not compare the estimated returns with the cost of the panels including the finance. Mr M would have had to look through several documents to understand that the financial benefits estimated – would not be sufficient to cover the monthly finance costs. And as an inexperienced consumer, I think it was reasonable for him to rely on what he was being told verbally.

So, 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.

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

Fair compensation – what Hitachi needs to do to put things right for Mr M

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr M's complaint for Hitachi 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 the 10 year term of the loan so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

In the event the calculation shows that Mr M is paying (or has paid) more than he should have Hitachi needs to reimburse Mr M 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 Hitachi 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 the 10-year loan term.

Normally, by recalculating the loan this way, Mr M's monthly repayments would reduce, meaning that he would've paid more each month than he 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 understand Hitachi doesn't wish to pay 8% simple interest in line with our established approach to these cases as it doesn't feel there's anything in the documents indicating Mr M was told that the solar panels would be self-funding. However, as explained above, I think the evidence supports the conclusion that a misrepresentation took place. And, in this case, I've seen no reason to depart from our established approach to these types of cases. So, I still think Hitachi needs to add 8% simple interest from the date of the overpayment to the date of settlement.

I think the fairest resolution would be to let Mr M 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 M and he continues to make his current monthly payment resulting in his loan finishing early, or
- d) the overpayments are returned to Mr M and he pays a new monthly payment until the end of the loan term.

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

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

If Mr M has settled the loan by refinancing, Mr M should supply evidence of the refinance to Hitachi, and Hitachi should:

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

I'm satisfied that there was sufficient information available at the time that Mr M first contacted Hitachi that means the claim should have been upheld and redress offered in line with our established approach. I direct that Hitachi should pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr M's complaint. Mitsubishi HC Capital UK Plc trading as Hitachi Capital Consumer Finance 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 19 August 2022.

Asma Begum
Ombudsman