

## The complaint

Mr J complains that Omni Capital Retail Finance Limited (“OCRF”) has rejected the claim he made under sections 56 and 75 of the Consumer Credit Act 1974 (“the Act”) in relation to a solar panel system he says was misrepresented to him by the supplier.

Mr J is represented by a claims management company (“the CMC”).

## Background

In or around September 2018, Mr J was contacted by a representative of a company I’ll call “S” to talk about purchasing a solar panel system (“the system”) to be installed at his home. After being visited by a representative of S, Mr J decided to purchase the system and finance it through a ten year fixed sum loan agreement with OCRF. The system was subsequently installed.

In October 2020 the CMC made a claim to OCRF on Mr J’s behalf under section 75 of the Act. The CMC said that, following a cold call, S had made a number of representations about the system that had turned out not to be true, and it was these misrepresentations that had induced Mr J to enter into the contract with S. The CMC said the following misrepresentations had been made:

- the total cost of the system was documented as £6,695 to mislead Mr J, as when the interest was added the total cost was actually £10,385.82;
- the system would generate free electricity;
- the system would be self-funding; and
- the feed in tariff (FIT) and savings on his electricity bills would provide enough income to cover the monthly loan payments.

OCRF issued a final response and explained that it didn’t agree the system had been misrepresented to Mr J or that there were any other reasons for the claim to be upheld. One of the reasons OCRF gave was that Mr J had not provided any sales documentation, so it had been unable to comment on Mr J’s allegations about what the salesman had told him about the benefits he could expect to obtain from the system.

One of our adjudicators looked into what had happened. Having considered all the information and evidence provided, our adjudicator didn’t think that there was enough evidence to fairly determine whether S had misrepresented the system to Mr J, and OCRF had not acted unfairly by reaching the same conclusion. She found no reason to uphold the complaint.

The CMC didn’t agree with the adjudicator’s view for the following reasons:

- Mr J had asked S for a copy of the sales documentation after the meeting, but none had been provided to him;
- it was not fair to hold against Mr J the fact that he had no sales documentation to support his section 75 claim;
- in the absence of anything in writing, Mr J had been entitled to rely on the salesman’s verbal representations.

As an agreement couldn't be reached, the case was passed to me for review. I wrote a provisional decision which read as follows.

### **My provisional findings**

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

Having done so, I am minded to uphold it in part. I will explain why.

### Relevant considerations

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 sections 56 and 75 of the Act.

Section 75 provides protection for consumers for goods or services bought using credit. As Mr J paid for the system with a fixed sum loan agreement, OCRF agrees that section 75 applies to this transaction. This means that Mr J could claim against OCRF (the creditor) for any misrepresentation or breach of contract by S in the same way he could have claimed against S (the supplier). So I've taken section 75 into account when deciding what is fair in the circumstances of this case.

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

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 him loss.

### What happened?

If there is a dispute about what happened, I must decide on the balance of probabilities – that is, what I consider to have been most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

Mr J says that during a sales meeting he was told that the system would be entirely self-financing and come at no additional cost.

There are several documents that have been provided by both parties. These include the credit agreement, the MCS certificate, and Mr J's FIT statements. I've considered these, along with Mr J's testimony and recollection of the sales meeting, to decide on balance what is most likely to have happened. Unfortunately, S's sales literature (such as a contract or a quote) was not provided to the adjudicator by either party. However, at my request OCRF kindly obtained the contract, quote, and a covering letter from S, and I have considered these too.

The quote is a brief document that sets out an itemised cost of the system, and the system's expected performance in kWh. It doesn't say anything about the financial returns from the system. Neither do the contract or the covering letter. The contract only sets out the cost.

The credit agreement sets out the amount being borrowed (*i.e.* the cash price of the system), the interest to be charged, the total amount payable, the term of the loan and the contractual monthly repayments.

### Cost of the system

On balance, I'm satisfied that Mr J was told that the overall cost of the system was more than its cash price. The credit agreement makes it clear that £6,695 is only the cash price. It sets out a clear breakdown of the deposit, the amount of credit provided, the total charge for credit, the monthly payments, and the total amount repayable, £10,385.82.

Having considered all the evidence, including Mr J's recollections, I'm satisfied that he was told that there would be a monthly loan repayment due. The credit agreement made it clear that the system would cost Mr J more than the cash price as he had decided to pay for it with an interest-bearing loan. I do not uphold this complaint point.

### Self-funding

Mr J has said that he was told by S's salesman that his monthly loan repayments would be covered, or "self-funded," by the FIT payments and the savings on his energy bills. Now that the sales documentation has been provided, I am satisfied that there was nothing in any of these documents to contradict his account of what he was told. Therefore on the balance of probabilities I accept that what he has told us is true.

When bringing a claim under section 75, the onus is on the claimant to provide all of the relevant evidence which is available to him. Our adjudicator decided that OCRF had handled Mr J's claim correctly because he had not provided the sales documentation which OCRF quite reasonably expects to see when such a claim is brought. In considering this complaint, that was my starting point too.

However, in this case I have departed from that stance for the following reasons. Firstly, because it is not Mr J's fault that he was not given copies of the quote and contract to keep. And secondly, because it would have been a simple matter for OCRF to request those documents from S before issuing its final response. Had it done so, OCRF would then have seen that there was nothing in S's sales literature to contradict what Mr J says he was told at the sales meeting.

So I uphold this part of this complaint. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mr J 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. OCRF should have upheld his claim on that basis. I am therefore minded to direct OCRF to put matters right in the manner set out below.

### Redress

The CMC has asked for the contract to be rescinded and for the panels to be removed. That is the usual remedy for misrepresentation, but I don't think that would be proportionate in a solar panels case. Instead, I will direct OCRF to put things right in line with our service's usual approach in solar panels cases.

I think that it would be fair and reasonable in all the circumstances of Mr J's complaint for OCRF to put things right by recalculating the original loan based on the known and assumed savings and income to Mr J from the solar panels over the ten 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.

If the calculation shows that Mr J is paying (or has paid) more than he should have, then OCRF needs 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 OCRF to restructure the loan. It should recalculate the loan to put Mr J in a position where the solar panel system is cost-neutral over the ten year loan term.

Normally, by recalculating the loan this way, Mr J'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 J 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 J and he continues to make his current monthly payment resulting in his loan finishing early, or
- d) the overpayments are returned to Mr J and he pays a new monthly payment until the end of the loan term.

If Mr J accepts my decision, he should indicate on the acceptance form which option [a, b, c or d] he wishes to accept.

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

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

### **Responses to my provisional decision**

Neither party responded to my provisional findings, so there is no reason for me to depart from them, and I confirm them here.

### **My final decision**

For the reasons I've explained, my decision is that I uphold this complaint. I order Omni Capital Retail Finance Limited to 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 J to accept or reject my decision before 22 November 2022.

Richard Wood

**Ombudsman**