

## **The complaint**

Mr R has complained that Omni Capital Retail Finance Limited (“OCRF”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

## **What happened**

Mr R bought a solar panel system (“the system”) for his home in November 2018. The purchase was funded by a ten-year loan from OCRF, which is therefore liable for the acts and omissions of the installer under the relevant legislation.

Mr R says the supplier of the solar panels misrepresented them – in that it told him:

- The system would cost £7,750.00. But the true cost including loan interest was £12,022.42.
- Mr R was told he would receive a tax-free six-month benefit of £601.08.
- The loan would be self-funded by the Feed-In Tariff (FIT) payments, so the system would not cost him a penny.

OCRF responded to the claim, which it rejected. It said:

- OCRF wasn’t present at the time of sale and the supplier is no longer trading so cannot be asked for its comments on what was said.
- The system has been generating electricity in line with the estimate given at the time of sale.
- Mr R hasn’t provided electricity bills to allow the electricity savings to be calculated.

Mr R was unhappy with this, so he referred a complaint to us. OCRF had eight weeks to resolve the complaint but was unable to do so.

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

## **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.

### 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 section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr R paid for the system with a fixed sum loan agreement, OCRF agrees that section 75 applies to this transaction. This means that Mr R could claim against OCRF, the creditor, for any misrepresentation or breach of contract by the supplier in the same way he could have claimed against 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 R and the supplier are deemed to have been conducted by the supplier 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 them loss.

#### What Mr R was told

Mr R says he was told that the system would be self-funding because the FIT payments would cover the loan repayments. He says he was told that he would receive a tax-free six-month benefit of about £601.08.

I think it is likely that the benefits of the system would've been discussed. Otherwise, I doubt Mr R would've agreed to the purchase. Mr R appears to have a clear memory of having been told the system was self-funding and the specific amount he'd receive.

#### Documentation

I've looked at the documentation to see if it made clear that the system would not be self-funding. In order for Mr R to make an informed decision about the benefits of the panels in relation to the overall costs to him he needed to be able to easily compare the cost of the solar panel system to any benefit he may receive or was promised.

The sales contract contained basic details of the system, its estimated electricity generation per year (3,045 kWh), the price with and without Vat, the deposit (£0.00) and the final amount due (£7,750.00). It showed that finance was being used to pay the final amount.

However, it did not include any details about the loan costs or the benefits of the system. So, it didn't show the true cost to Mr R (including loan interest) or allow him to compare this to the benefits.

The loan agreement was a separate document, which showed the cash price of the system (£7,750.00), the amount of credit (£7,750.00), the total charge for credit (£4,272.42), the monthly repayment (£100.18) and the total amount payable (£12,022.42). So, it showed the full cost of the system but didn't show its benefits to allow an easy comparison.

There is a separate estimated returns document which sets out the year-one benefits of the system, which said that Mr R would receive a total year-one benefit (FIT payments and electricity savings) of £444.42.

While this differs from what Mr R was told, there is no reference to the cost of the system in this document. So, similarly to the other documents, I don't think it would have allowed Mr R to easily compare the true cost of the system to any benefit he may receive or that he

had been promised.

Taking all of the above into account, I think the various documents provided to Mr R at the time of sale were presented in such a way that it was not easy for him to compare the likely benefits with the loan repayments. And it would have been difficult for him to make an informed decision without relying on what he was told by the supplier. So, I think it was reasonable for Mr D to have relied on what he was told by the representative when he agreed to enter into the contract.

#### Has Mr R suffered a loss?

I've looked at Mr R's FIT statements to check what payments Mr R has received. From 16 March 2019 to 1 October 2016 the system generated 2,620 kWh of electricity. In total Mr R received FIT payments of £173.88. This covers just over a six-month period including the summer months when the system would generate the most electricity. It is clear that Mr R has received payments that were much less than he was promised at the time of sale.

I don't have evidence of Mr R's electricity savings following installation of the system. But a reasonable estimate of his electricity savings would be about £250 in the first year. Bearing in mind the loan repayments amounted to about £1,028 per year, it is highly unlikely that Mr R could have saved enough to cover his loan repayments. So, I think he has suffered a loss because of the supplier misrepresenting the benefits he would receive from the system. Because of this, I uphold this complaint.

#### **Putting things right**

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr R's complaint for OCRF to put things right by recalculating the original loan based on the known and assumed savings and income to Mr R from the solar panels over a ten-year period 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 R 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 Mr R by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require OCRF to restructure Mr R's loan. It should recalculate the loan to put Mr R in a position where the solar panel system is cost neutral over a ten-year period.

Normally, by recalculating the loan this way, a consumer's monthly repayments would reduce, meaning that they would've paid more each month than they 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.

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

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

If Mr R 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 8% interest.

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

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

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

### **My final decision**

For the reasons I've explained, I'm upholding Mr R's complaint. Omni Capital Retail Finance Limited 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 R to accept or reject my decision before .

Phillip Lai-Fang  
**Ombudsman**