

The complaint

Mr D is unhappy with the response of Omni Capital Retail Finance (OCRF), following a claim against it under section 75 of the Consumer Credit Act 1974 (“the CCA”).

What happened

In 2018, Mr D was visited by a representative of a company I’ll call “S” to discuss purchasing a solar panel system (“the system”) to be installed at his home. Mr D decided to purchase the system with a ten-year fixed sum loan agreement provided by OCRF. The system was subsequently installed at his home.

Mr D says that S told him that the benefits he would receive from the system would be sufficient to cover the loan repayments, resulting in it being “self-funding”. Mr D has said that this has not turned out to be the case.

In March 2021, Mr D, via his representative, made a claim under section 75 of the CCA to OCRF. Mr D said that what S had told him about the about his system being self-funding was a misrepresentation, and it was this misrepresentation that induced him to enter the contract.

In its final response letter, OCRF said as it was not present at the sale, so it could not comment on what was said. As such, it did not accept that the system was misrepresented to Mr D.

However, OCRF said that Mr D’s system was not generating electricity in line with the estimates at the time of sale. It were generating much less. OCRF had the system inspected and fixed a fault. The system are now operating correctly.

Since Mr D had missed out on some of the expected benefits of the system up to the point when they were fixed, OCRF offered compensation for the FIT payments and electricity savings that Mr D had missed out on.

As Mr D was unhappy with this response, he made a complaint, and OCRF had 8 weeks to investigate.

As the matter wasn’t resolved in that 8 weeks, one of our investigators looked into it. They concluded that Mr D’s testimony was convincing, and that the benefits of the system had been mis-represented to him and caused him to enter into a contract he otherwise would not have entered into. She recommended that OCRF carry out a calculation to establish what the likely benefits would be for the system over the original loan term and reduce Mr D’s loan, so it would cost him no more than that. She also said that OCRF should pay Mr D £100 for the trouble and upset caused.

OCRF did not agree with the investigator’s assessment. In summary it said:

- While the costs and benefits were not shown on one single document, these figures were available to Mr D and presented in a clear way.

- The “estimated year one returns” document clearly shows that the estimated benefit was £302.95 in the first year.
- The Omni Credit Agreement shows the full price of the system (including the interest) and the monthly payment amount. These figures were set out for Mr D again at the time the loan went live in his welcome email.
- If Mr D was expecting the system to be self-funding, OCRF would expect him to query why the cost of the loan was more than the estimated benefits and therefore how he could make the system self-funding.

As an agreement couldn't be reached, the complaint has been passed to me to consider.

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 is 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 would 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 CCA. Section 75 provides protection for consumers for goods or services bought using credit. It states:

”If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in the respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor”.

As Mr D paid for the system with a fixed sum loan, OCRF agrees that section 75 applies to this transaction. This means that Mr D can claim against OCRF – the creditor – for any misrepresentation or breach of contract 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 D and S, as the supplier, are deemed to have been conducted by S as an agent of OCRF.

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 D says he that during a sales meeting S told him that the system would be self-funding. And that he wouldn't have bought it if he understood that was incorrect. I haven't seen anything to suggest that Mr D had previously shown an interest in solar panels before this. With this in mind, and having considered Mr D's testimony, I find it to be plausible and persuasive.

The documentation

I've gone on to consider the paperwork that has been provided to see if there was anything contained within it that made it clear that the system wouldn't be self-funding. Were the

paperwork clear in this regard, I may find that Mr D's testimony is no longer plausible, since it would be unlikely that the salesperson would have told Mr D one thing while discussing paperwork that made it clear that was incorrect.

Firstly, I'll consider the loan agreement. This sets out the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly loan repayments. I'm satisfied that this is clear in what it shows. It doesn't set out the expected benefits of the system (which, being a loan agreement is not a requirement). However, this means the loan agreement does not make it clear that the system was not self-funding.

The contract clearly shows the basic cash price of the system (with and without VAT), the deposit payable and the outstanding balance after payment of the deposit. It also shows the amount of electricity the system was expected to generate each year. But it does not show the cost of the finance, so it does not include the true cost to Mr D. Nor does it show the benefits of the system in terms of FIT payments and electricity savings. So, again, it does not make it clear that the system would not be self-funding.

The "estimated year one returns" shows the estimated annual electricity generation figure and uses this to calculate the first-year benefit in FIT payments and electricity savings. But it does not show the cost of the system. So, it does not make it clear that the system would not be self-funding.

Solar PV:

Your 3.68 kWp solar PV installation was estimated to yield 2413.96 kWh.

Potential Year One Benefit

Generation Tariff:	SAP Yield kWh	x 100%	x <u>3.93</u>	p/kWh	= £ <u>94.87</u>
Export Tariff:	SAP Yield kWh	x 50%	x <u>5.26</u>	p/kWh	= £ <u>63.75</u>
Energy Savings:	SAP Yield kWh	x 50%	x <u>12</u>	p/kWh	= £ <u>144.84</u>
Total Estimated Year One Benefit					= £ <u>302.95</u>

Given what is shown on these three documents, I think it is plausible that the salesperson could've gone through them separately and told Mr D the system was self-funding. To realise this was wrong Mr D would've had to go to some effort – using at least two of the documents – to work out that what he was told was wrong. And I don't think it would be fair and reasonable to have expected him to do so. Especially given that as a consumer I think Mr D was within his rights to rely on what the salesperson told him, which he could reasonably expect to be accurate.

Having considered all the evidence, including what OCRF has said, I'm satisfied that it is more likely than not that S told Mr D that the system would be self-funding. It was not, and this misrepresentation induced Mr D to enter into the contract.

Has Mr D suffered a loss?

My view is that for the system to be self-funding, the monthly savings and benefits he would achieve should have been sufficient to meet his monthly loan repayments. That was, and remains, Mr D's expectation given what he was told at the time of sale.

It is clear from the information that has been provided by Mr D and his representative that this has not been the case and there was a shortfall between his monthly loan repayments and the benefits he has received from the system (even taking into account the fault that has now been fixed).

For the reasons I've explained above, I find it likely that Mr D has suffered a loss as a result of the misrepresentation made by S. And as OCRF has equal liability for the misrepresentation made by S, I find that it is responsible for Mr D's loss.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr D's complaint for OCRF to put things right by recalculating the original loan based on the known and assumed savings and income to Mr D from the system over a ten-year period so he pays no more than that, and he keeps the system, and any future benefits once the loan has ended.

In its calculations, OCRF should use the actual electricity generation figures where these are available. For other times, it can estimate the benefit based on the expected generation figure shown on the MCS (taking into account any expected performance degradation over time). It can also take into account any payment it has already made to Mr D to compensate him for the effects of the fault that it has since fixed.

In the event the calculation shows that Mr D 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 D by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require OCRF to restructure Mr D's loan. It should recalculate the loan to put Mr D in a position where the 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 D 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 D and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr D and he pays a new monthly payment until the end of the loan term.

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

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

1. Refund the extra Mr D paid each month with the OCRF loan.
2. Add simple interest from the date of each payment until Mr D receives his refund.
3. Refund the extra Mr D paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr D receives his refund.
5. Pay Mr D 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 D 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 D '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 D to accept or reject my decision before 5 October 2022.

Phillip Lai-Fang
Ombudsman