

Complaint

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

Background

Mr S bought solar panels for his home in 2018. The purchase was funded by a loan from Omni, 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 S into believing that the panels would be self-funding, which they weren't. Mr S said that he'd been told he may have to make minimal contributions to the loan at the start, but the benefits would repay the loan within the term of the loan.

Mr S's complaint was considered by one of our adjudicators. She thought that the benefits of the panels were mis-represented to Mr S, 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.

Omni didn't agree saying it didn't feel Mr S had substantiated his claim with evidence and that the complaint had been upheld solely on Mr S's testimony. Omni also felt that the credit agreement would only ever have the financial information related to the credit and not information related to the product it was used to purchase. It said the installer likely gave Mr S estimated benefits document which would have compared the benefits with the costs – as it has done so in other cases. It also set out that the solar panel system seemed to be working as designed and Mr S had received some benefit.

As an agreement couldn't be reached, 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.

Omni 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 Omni feels that the complaint has been upheld based on Mr S's testimony alone and there's no corroborative evidence. It adds that the installer usually used an estimated benefits document which would have compared the benefits with the costs.

I can see the contract given by the installer does have the power generation figure on the same page as the cash price – but the estimated performance was set out as a SAP figure rather than what that means in financial terms. Given Mr S was not the expert in solar panel performance and annual generation, I think he would have relied on the installer to help him understand what that means. And he says he was assured that the solar panels would be

self-funding within the loan term, albeit he may need to make small contributions at an early stage. Mr S's testimony has been clear and consistent throughout, so I think its reliable evidence.

I appreciate credit agreements would not usually have any estimated benefit information. Where estimated benefits are discussed, there is usually an estimated benefits document completed and a copy left with the consumer. So we'd normally expect to see a document setting out the costs and benefits which would help us decide whether the installer had made it clear to consumers what the likely benefits of the panels were, and how that would impact their payments.

I've thought carefully about Omni's comments, that the estimated benefits document usually used by this installer would have compared the benefit with the cost. However, we've seen no evidence that this was used in Mr S's case, whether it was completed correctly, if at all. Additionally, even if one had been used, the figures may well have pointed to the solar panels being self-funding. We must decide each case on the individual merits of that case, and I've seen no evidence Mr S was given this document, or what the figures might have been. And Mr S says he wasn't given a document with any figures to keep, so he cannot produce something he does not have. He was only assured that the solar panels would be self-funding.

So, while I understand Omni's concerns, I'm still satisfied that Mr S's testimony is reliable. And I think the documents he has produced gives a good indication of the likely discussions Mr S had with the installer. And they do not make it clear that the benefits the solar panels will likely produce, would not be sufficient to cover the finance payments.

And while the solar panels may well be working as designed and producing some benefit, Mr S's complaint is that he was assured these benefits would be sufficient to make the solar panel system self-funding within the 10 year term of the loan.

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 S 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 Omni didn't treat Mr S fairly and he lost out because of what Omni did wrong. And this means that it should put things right.

Fair compensation – what Omni needs to do to put things right for Mr S

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr S's complaint for Omni to put things right by recalculating the original loan based on the known and assumed savings and income to Mr S from the solar panels over a 10-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 S is paying (or has paid) more than he should have, then Omni 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 S by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require Omni to restructure Mr S's loan. It should recalculate the loan to put Mr S in a position where the solar panel system is cost neutral over a 10-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 S 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 S and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr S and he pays a new monthly payment until the end of the loan term.

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

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

- 1. Refund the extra Mr S paid each month with the Omni loan.
- 2. Add simple interest from the date of each payment until Mr S receives his refund.
- 3. Refund the extra Mr S paid with the refinanced loan.
- 4. Add simple interest from the date of each payment until Mr S receives his refund.
- 5. Pay Mr S 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 S first contacted Omni that means the claim should have been upheld. I direct that Omni should pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr S'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 S to accept or reject my decision before 11 November 2022.

Asma Begum
Ombudsman