

The complaint

Mr G complains that Omni Capital Retail Finance Limited (“OCRF”) rejected his claim against it under section 75 of the Consumer Credit Act 1974 (“the Act”) in relation to his purchase of some solar panels.

Mr G is represented in this complaint by a claims management company (“CMC”).

Background

Mr G bought solar panels for his home in September 2017. The purchase was funded by a seven-year loan from OCRF, and so that business is liable for the acts and omissions of the installer under the Act. In this case, that relates to the supplier of the panels misleading Mr G into believing that the panels would be self-funding, which they weren’t.

Mr G originally approached the Energy Ombudsman, which in 2018 upheld his complaint and awarded him £2,000 compensation. Mr G accepted that offer in writing in full and final settlement of his claim. That award is enforceable in court.¹ But this compensation was never paid. After chasing the supplier for payment for two years, in 2020 he instructed the CMC to bring a claim against OCRF under section 75 of the Act. When OCRF declined that claim, Mr G complained about that outcome to our service.

Mr G’s complaint was considered by one of our adjudicators. She thought that the benefits of the panels were mis-represented to Mr G, 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, and should take the Energy Ombudsman’s award of £2,000 into account, as Mr G could still claim it. OCRF didn’t substantively respond, so the case was referred for an ombudsman’s decision.

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, but only to award Mr G £2,000. I will explain why.

Mr G’s complaint is that OCRF did not uphold his claim under section 75 of the Act. That claim was that the supplier of the panels had misrepresented them. Section 75(1) says that where goods or services are bought with credit, the creditor – here, that is OCRF – is jointly and severally liable with the supplier for any misrepresentation made by the supplier, and the purchaser shall have a like claim against the creditor as he has against the supplier.

¹ See <https://www.ofgem.gov.uk/information-consumers/energy-advice-households/making-complaint-about-your-energy-supplier-or-network-operator>

That means that OCRF's liability for what the supplier did is the same as the supplier's. So once Mr G accepted an award of £2,000 in full and final settlement of his claim against the supplier, that discharged the supplier – and, in my view, OCRF too – from any liability it might have had to pay Mr G more than that. I have seen Mr G's signed acceptance form, dated 3 December 2018, and it clearly states that the award was in full and final settlement.

If Mr G took the supplier (which is still trading) to court, the supplier could rely on the Energy Ombudsman's award as a partial defence to his claim, capping damages at £2,000 plus interest. So I do not think it would be fair to require OCRF to pay him more than that. I will award simple interest at eight per cent a year from 3 December 2018 to the date of settlement.

I have considered the risk of double recovery; that is, that after getting £2,000 from OCRF, Mr G could still take the supplier to court to get another £2,000. That would not be fair. But I think that risk can be ruled out, because under section 75(2) OCRF has the right to be indemnified by the supplier for any loss it incurs in meeting its liability under section 75(1). And once the supplier has indemnified OCRF, it could then plead that payment in its defence to any court claim that might be brought against it for the Energy Ombudsman's award.

For the reasons I've explained, I am currently minded to uphold this complaint. Subject to any further representations I receive from the parties ... I intend to order Omni Capital Retail Finance Limited to pay Mr G £2,000, plus simple interest on that sum at the rate of eight per cent a year from 3 December 2018 to the date of settlement.

Responses to my provisional findings

OCRF accepted my provisional decision. The CMC did not. It argued that Mr G should still receive the full award that the adjudicator had recommended. He had originally asked for £4,500, and had only begrudgingly accepted the Energy Ombudsman's award because it had been presented to him on a "take it or leave it" basis and he had wanted to draw the matter to a close. At the time, he had not been aware of the alternative remedy described by the adjudicator, but the CMC said that this would be the fairest way to resolve this complaint.

My findings

I have considered whether it would be fair and reasonable for me to depart from the terms of section 75 to the extent of allowing Mr G to recover more from OCRF than he would be entitled to claim from the supplier in an action to enforce the Energy Ombudsman's award, for the reasons advanced by the CMC. But I do not think that it would be. It was not OCRF who mis-sold the solar panels, but a third party; OCRF has done nothing wrong (except to decline Mr G's section 75 claim in 2020). So I think it would not be fair if OCRF now had to pay more compensation than the party who was really at fault would have to.

My final decision

My decision is that I uphold this complaint. I order Omni Capital Retail Finance Limited to pay Mr G £2,000, plus simple interest on that sum at the rate of eight per cent a year from 3 December 2018 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 January 2023.

Richard Wood
Ombudsman