

## **Complaint**

Mr B has complained that American Express Services Europe Limited (AESEL) trading as American Express ("AmEx") rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

## **Background**

Mr B bought solar panel system (the system) for his home in 2014. The purchase was funded in part with a payment from Mr B's AmEx credit card, 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 B into believing that the panels would be self-funding over an 8-year period, which they weren't.

Mr B's complaint was considered by one of our adjudicators. She thought that the benefits of the system were mis-represented to Mr B, and that fair redress would be to make the panels cost no more than the benefit they would provide over a ten-year period. The redress should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

AmEx didn't agree explaining it felt the complaint shouldn't be upheld on Mr B's testimony alone. It also added that Mr B would make significant savings on energy bills and earn an income from the Feed in Tariff (FIT) over a 20-year period. AmEx felt the system would be self-funding over the 20-year period.

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.

AmEx 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. It's also been set out by our adjudicator in previous correspondence. So, I don't consider it necessary to set all of that out in this decision.

I understand that there is limited documentary evidence available in this case. But Mr B has said he was not left a quote or the facts and figures the sales representative set out during the sales meeting. Consumers cannot provide evidence that they do not have. But where there is limited information about a sale, I have to make a decision based on the available evidence and that includes Mr B's testimony.

Mr B has repeatedly explained he was assured that the system would be self-funding in around 8 years, and it was based on this representation that he purchased the system. Mr B added that he was due to retire within a year of the sale and I don't think it's unusual that he remembers the amount of time it would take for him to recoup the cost. Given his financial

situation, I think that's likely to have been of paramount importance and easily remembered. His testimony has been consistent and clear throughout.

Overall, I think his testimony is reliable evidence of what he was likely told during the sale.

I understand AmEx has questioned whether the written statements made by the installer amounted to a misrepresentation. However, our investigator didn't assert the general statements on the website amounted to a misrepresentation in themselves. As explained, the nature and tone of the statements on the website match that which Mr B has alleged – and this adds weight to Mr B's claim regarding the specific misrepresentations made by the installer verbally in his case.

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

### **Fair compensation – what AmEx needs to do to put things right for Mr B**

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr B's complaint for AmEx to put things right by recalculating the cost of the system based on the known and assumed savings and income to Mr B from the solar panels over a 10 period so he pays no more than that, and he keeps the solar panel system, and any future benefits after the 10-year period. This is in line with our established approach to these types of cases

I have thought carefully regarding AmEx's comments that Mr B has benefited from the solar panel system and will continue to do so going forward. I appreciate AmEx calculates that the total benefit he will likely receive over a 20-year period will more than cover the total cost of the system. However, given Mr B's imminent plans to retire at the time of sale, I don't believe he envisaged waiting 20 years to recover his costs. And given his circumstances, I don't think it's fair to expect Mr B to wait 20 years before recouping his costs.

Mr B says he was assured the system would be self-funding in *around* 8 years. But I've decided the redress should be calculated over a 10 period (as recommended by our investigator), rather than the 8-year period Mr B has requested. This is because I need to ensure the redress is fair and reasonable to both Mr B and AmEx.

The purpose of our redress methodology is to make sure Mr B doesn't suffer a financial loss, not to make the misrepresentation come true. As AmEx says, Because Mr B can expect to benefit from the solar panels (through energy savings and Feed-In Tariff payments) for 20 years, I think a 10-year period is reasonable when calculating the redress as suggested by our investigator.

In this specific case, I do not think a shorter period or longer period would strike the appropriate balance in terms of fairness for both parties.

In the event the calculation shows that Mr B is paying (or has paid) more than he should have, then AmEx 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 B by way of explanation.

I would add that I do appreciate that it's difficult to know for certain what will happen in the future and what Mr B will actually receive in benefit going forward. However, our established approach to redress in these types of cases seeks to calculate a reasonable amount compensation to put things right.

As our adjudicator explained, Mr B's FIT tariff was 14.9p and the Export tariff was 4.77p after installation. AmEx should use these figures to work out what benefit he'll get over 10 years from the FIT/Export payments. American Express should assume a 37% self-consumption rate of electricity to cover Mr B's use in the home and a default electricity unit price of 15p per kwh to work out the electricity savings he will achieve over 10 years.

I would add that while the total cost of the system was originally £15,250 – Mr B has confirmed he was given a discount of £250 and he only paid £15,000 which is shown on the statements he has submitted.

Mr B paid for the deposit for his solar panels by credit card and paid the balance from his bank account. Therefore, AmEx should pay Mr B the difference between what he paid in total and the self-funding amount, with 8% interest.

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

### **My final decision**

For the reasons I've explained, I'm upholding Mr B's complaint. American Express Services Europe Limited (AESEL) trading as American Express 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 B to accept or reject my decision before 13 January 2023.

Asma Begum  
**Ombudsman**