

The complaint

Mr C complains about Allium Money Limited's response to a claim he made under sections 75 and 140 of the Consumer Credit Act 1974.

What happened

Mr C bought a solar panel system ("the system") for his home in 2019, from a supplier I'll call "F". The purchase was funded by a loan from Allium Money Limited ("Allium"). The cost of the system was £10,000 and the terms of the loan were that Mr C would repay a total of £15,514.34 over 10 years with 119 monthly repayments of £129.29 and a final payment of £128.83.

Mr C says that F's salesman told him the system would be self-funding, in that income and savings from it would cover the monthly loan repayments. He made a claim under sections 75 and 140 of the Consumer Credit Act 1974 ("the Act") to Allium on that basis via a third party claims management company ("CMC").

Allium didn't uphold Mr C's complaint and so the matter was referred to our service. Our investigator recommended the complaint be upheld. In summary, she felt that Mr C likely was told the system was self-funding and that the documentation F had given him didn't clearly set out that wasn't the case. She felt 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 the term of the loan. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Allium didn't agree and made several points. They said the documentation was likely explained by F's salesman so that Mr C would understand that the income and savings from the system wouldn't cover the loan repayments each month. Allium also cast doubt on Mr C's testimony noting that the CMC had incorrectly referred to FIT payments in their letter of claim. And Allium said that Mr C had on several occasions been asked by the provider of the social energy payments whether he wanted to opt into their export tariff but he didn't so.

As the complaint remains unresolved, the matter has been passed to me to decide.

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'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 C paid for the system with a fixed sum loan agreement, section 75 applies to this transaction. This means that Mr C could claim against Allium, 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 sets out that any negotiations between Mr C and the supplier are deemed to have been conducted by the supplier as an agent of Allium. 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.

Mr C says he was told the income and savings from the system would cover the loan payments and that his bills would reduce as a result. I think it's likely that the benefits of the system would've been discussed. Otherwise, I doubt Mr C would've agreed to the purchase. We have asked Mr C for his recollections of the sale, and he appears to have a clear memory of having been told the system was self-funding.

I've looked at the documentation to see if it made clear that the system would not be self-funding. In order for Mr C 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.

I've seen that Mr C was asked to sign several, separate amounts of documentation. F provided him with a document titled 'Estimated Year One Returns'. This set out two amounts relating to the 'potential year one benefit' in energy savings (£216.76 and £108.38). It also set out the 'potential year one benefit' in social energy was £303.54. And it set out that the 'total estimated year one benefit' would be £464.43 and the estimated yearly average savings from social energy would be £681.19.

In my view, that was a lot of information for Mr C to take in, just within that one document. F also gave Mr C a 16-page quote about social energy connected battery storage. There were several other figures in this quote relating to tariff rates and estimated savings and income. The quote contained a table called 'empowering your energy future' which stated Mr C could make total savings and benefits over 30 years of £12,932.76.

F also asked Mr C to look at their document entitled 'Your battery order'. This put the cost of the battery element of the system at £6,000. It also set out that the total potential savings and benefit (over 30 years) was £12,932.76 with estimated potential savings of £303.54.

There was a further document titled 'validation sheet' which put the total payment required as £10,000 and that this was to be repaid by finance.

All the above documentation was presented to Mr C on the same day by F's salesman, and he was asked to sign each one of them that day. There were several amounts and figures that Mr C had to refer to and try to cross-reference with the other documentation he had. And some of the figures were replicated across more than one document. I don't find that this documentation clearly set out the costs and benefits to Mr C in a way that was easily understandable.

I note also that there was nothing within the documentation which set out how the proposed finance agreement would compare to this, so that Mr C was aware that the cost of the system likely wouldn't cover the cost of the loan for some time.

On balance, I'm persuaded that Mr C was told the system would be self-funding. Certainly, in my view, the documentation didn't clearly set out that wouldn't be the case. Mr C has provided clear recollections that F's salesman told him this and I don't find his testimony to be lacking in credibility as Allium claims. I find Mr C's testimony plausible, consistent and

persuasive. Although the CMC referred to FIT payments in its letter of claim, and Allium has referred to this as evidence of a lack of consistent testimony, we have specifically asked Mr C for his recollections which he has provided.

Allium has mentioned that Mr C was asked on more than one occasion whether he wanted to opt-in to the social energy export tariff, and that he didn't then do so. Mr C doesn't recall being asked this and I don't find that Allium has done enough to show me that this did happen. They have mentioned an e-mail trail involving Mr C where this was discussed but I've not been sent this to review. So, I don't think Allium has made a particularly convincing argument that Mr C was clearly given information about what he needed to, which he then chose to ignore or perhaps forgot to do. It's also possible that Mr C was told, as he has said, that his bills were correct.

Mr C has said he wasn't in the market for solar panels, and I think that's likely true. So, it wasn't the case that Mr C was set on buying these for reasons other than financial. As such, I think that the cost of the system and how this would be repaid was of high importance to him. I see no compelling reason why Mr C would have agreed to enter into the purchase had he not been given assurances about its cost and how this would cover his loan payments. I appreciate Allium won't see things that way, but I've seen no obvious weakness in Mr C's testimony to make me think otherwise. And I've set out why I find that the sales documentation wasn't clear to enable Mr C to make an informed choice with all the key information presented to him in a clear, easy to understand way.

So, for the reasons I've set out above, I will be upholding Mr C's complaint.

Putting things right

I understand Mr C no longer lives at the property where the solar panels are installed. But I don't think this should have any bearing on how Allium puts things right. Mr C would've been aware that by moving out of the property he would no longer benefit from them, and so gave up the opportunity to benefit from future savings. So, Allium can still take into account the savings Mr C would have received over the term of the loan.

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

If the calculation shows there is a loss, then where the loan is ongoing, I require Allium to restructure Mr C's loan. It should recalculate the loan to put Mr C in a position where the solar panel system is cost neutral over the original loan term.

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 per year from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr C 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 C, and he continues to make his current monthly payment resulting in his loan finishing early, or

D. the overpayments are returned to Mr C, and he pays a new monthly payment until the end of the loan term.

If Mr C accepts my decision, he should indicate on the acceptance form which option he wishes to accept. If Mr C has settled the loan, Allium 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 C has settled the loan by refinancing, he should supply evidence of the refinance to Allium, and they should:

1. Refund the extra Mr C paid each month with the Allium loan.
2. Add simple interest at 8% each year from the date of each payment until Mr C receives his refund.
3. Refund the extra Mr C paid with the refinanced loan.
4. Add simple interest at 8% each year from the date of each payment until Mr C receives his refund.
5. Pay Mr C the difference between the amount now owed and the amount he would've owed if the system had been self-funding.

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

My final decision

I uphold this complaint. I direct Allium Money Limited to 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 C to accept or reject my decision before 16 February 2024.

Daniel Picken
Ombudsman