

The complaint

Mr W has complained about the way Omni Capital Retail Finance Limited (“Omni”) dealt with claims he’d made under section 56 (s56) and section 75 (s75) of the Consumer Credit Act 1974 (the “CCA”).

Mr W has been represented in bringing his complaint but, to keep things simple, I’ll refer to Mr W throughout.

What happened

Mr W tells us he purchased a solar panel system (“the system”) in March 2019 from a supplier I’ll call “S” using a fixed sum loan agreement from Omni. The system cost £8,595 and Mr W paid a £100 deposit. It was installed in April 2019. The total amount payable under the agreement was £13,278.12 and it was due to be paid back with 120 instalments of around £110.

In April 2022 Mr W put in a claim with Omni. He said (prior to the installation) he’d been cold called by S, and he allowed a salesperson to visit his home to explain the system. Mr W said the salesperson made several misrepresentations, mainly that the system would be self-funding. Mr W says he was told that the electricity the system generated would lead to him being paid a Feed in Tariff (FIT) payment under a government backed scheme. Mr W says S told him he’d make significant savings on his electricity bills, and that those savings would cover the fixed sum loan repayments.

Mr W says he only agreed to purchase the system based on the verbal representations from S. Mr W says he wasn’t given time to consider the paperwork or weigh up his options. Mr W says he only received an average annual reduction to his electricity bill of around £125. He says the system isn’t self-funding. Mr W says to mitigate his loss he took out another loan to pay off the one with Omni.

In summary, Mr W says S made several breaches of the Renewable Energy Consumer Code (RECC). He says he was given false and misleading information and that S didn’t do everything it was supposed to prior to the system being installed.

Mr W says as a result of the misrepresentations he should be able to rescind the contract and claim damages. He says Omni is responsible for antecedent negotiations under s56 of the CCA. And that it’s jointly liable for losses suffered as a result of misrepresentation under s75 of the CCA.

Omni responded to the claim and said it wasn’t present at the point of sale so it couldn’t comment on what was discussed. It said the loan agreement Mr W signed was clear in setting out all the costs. Omni pointed towards a satisfaction note Mr W signed setting out he knew the fixed sum loan agreement was separate to any financial incentives he may receive. Omni said Mr W’s decision to purchase the system shouldn’t have been based on any potential future benefits of the system.

Omni also pointed out Mr W was given 14 days between signing the agreement and the installation being carried out, so he had enough time to review it. And if he felt pressured, he had time to withdraw from the agreement.

Omni said S is now in administration but that there's no evidence to demonstrate it didn't adhere to the relevant standards. Ultimately Omni didn't uphold the claim. Mr W decided to raise a complaint about the way Omni handled the claim. Omni's response to the complaint was in line with its response to the claim. Mr W asked our service to consider it.

One of our investigators looked into things but didn't uphold the complaint. She reviewed the documentation supplied at the point of sale by S. She highlighted a document setting out the estimated year one returns which sets out basic information about the system. It says:

- The estimated annual generation is 2,440 kWh
- The predicted year 1 FIT benefit is N/A
- The predicted export income is shown as N/A
- The predicted electricity savings is £154.94
- The estimated year 1 total benefit is £154.94

Our investigator said the FIT benefit was set as N/A likely because the FIT scheme closed to new applicants on 1 April 2019. Given Mr W signed the agreement on 28 March 2019 she thought it likely S's paperwork hadn't been updated by that point. But she didn't think Mr W would have been led to believe he'd receive FIT benefits because no figure was included on the document.

Our investigator didn't think Mr W could reasonably have been led to believe the system was self-funding because the estimated year 1 total benefit of around £155 clearly wouldn't have covered the monthly repayments of around £110. Therefore, she didn't think there was sufficient evidence Mr W had been misled by S.

Mr W didn't agree with the assessment. He said he had it confirmed the system had been registered for the FIT scheme. He referred to a previous complaint raised that S hadn't given him a Microgeneration Certification Scheme (MCS) certificate to enable him to register for the FIT scheme. He says he believed the system was intended to be registered for the scheme and it was due to inaction by S that he encountered difficulties. Mr W says he's never received FIT payments. He says the documentation doesn't change the clear and unambiguous statements made by S that the system would be self-funding. He said it's not reasonable to have expected him to calculate things himself given the representations made by S.

Our investigator asked if Mr W had any other systems eligible for FIT payments and whether the system was intended for domestic or business purposes. Mr W said he doesn't have any other systems eligible for FIT payments, but he did have a second set of solar panels fitted at a later date. He said the system under the agreement with Omni was on his domestic property, but the bills were in the name of his business, so it's likely best categorised as business use. He highlighted that he wouldn't have registered for the FIT scheme had it not been for the representations made by S.

Mr W gave no explanation as to how the system was registered for the FIT scheme. He said he'd never approached anyone and was told S would deal with it. Mr W said he contacted his electricity supplier and it told him to complete an application. He was unable to do that because he didn't have an MCS certificate. This is what led him to request the certificate from S, and he says he thought it would deal with it, but it subsequently went out of business.

Our investigator said she doesn't have evidence that the system Mr W has relating to the claim with Omni is registered for FIT. And that she doesn't have enough evidence Mr W was told he'd receive FIT payments. She also noted the system wasn't installed before the deadline for registering for FIT benefits so she couldn't see how it would have been able to benefit. Moreover, even if Mr W was registered for FIT benefits, she didn't think he'd receive sufficient benefit for his system to be self-funding within the loan term because of the low FIT rates in March 2019.

Mr W didn't agree. He said he'd supplied evidence his system is registered for the FIT scheme and while there was an issue with the registration it's unfair to ignore the evidence.

As things weren't resolved, the complaint has been passed to me to decide.

More recently Mr W has supplied evidence he says shows faults with the solar panel system due to issues arising out of the installation of it.

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.

I want to acknowledge that whilst I've summarised the events of the complaint, I've reviewed everything on file. If I don't comment on something, it's not because I haven't thought about it. I'm focussing on what I consider are the key issues.

Mr W paid for the system using a fixed sum loan agreement. This is a regulated consumer credit agreement, and our service is able to consider complaints relating to these sorts of agreements.

I take into account the relevant law. So, in this case, s56 has the effect of deeming S to be the agent of Omni in any antecedent negotiations. Omni is responsible for the antecedent negotiations S carried out direct with Mr W. I think the negotiations were antecedent because they preceded the relevant conclusion of the agreement.

Moreover, s75 makes Omni responsible for a breach of contract or misrepresentation by S under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

Mr W says he was verbally misled the system would effectively pay for itself. I've taken account of what Mr W says he was told. I've also reviewed the documentation that I've been supplied. From what I've seen, Mr W signed a validation sheet; a document outlining the estimated year one returns; a form setting out the order details and SAP calculations; an authority for Omni to pay S; and the fixed sum loan agreement.

I'm conscious the fixed sum loan agreement sets out the amount being borrowed; the interest charged; the total amount payable; the term; and the contractual monthly loan repayments. I think this was set out clearly enough for Mr W to be able to understand what was required to be repaid towards the agreement.

I'm also mindful the year one returns form Mr W signed sets out that the total estimated year one benefit was £154.94. I think this ought to have shown Mr W the savings wouldn't have covered the monthly repayments towards the loan agreement of £110. I think the form is clear. I'm also conscious the generation and export tariff have been marked as not applicable on the form. I think the lack of any figures input here is because I don't think Mr W would have been eligible for FIT benefits because his system was installed after the scheme

ended. I would have expected Mr W to have queried the shortfall if he'd been told the system would be self-funding. And I would have expected him to query why the form was marked as not applicable for FIT benefits if he was told he'd receive them. We've not been supplied an explanation for this. I also consider Mr W was given sufficient time to review the forms and query anything he was unhappy about before S carried out the installation.

I do however agree it's curious there's some contradicting information on whether or not Mr W's system was registered for the FIT benefit. But even taking that into account, I don't find there's enough evidence S misrepresented the FIT benefits Mr W would receive, which is what Omni is jointly liable for. I've not been supplied evidence Mr W raised a complaint S hadn't registered him for FIT benefits. In any event, on balance, given the timing of the paperwork and the installation, I think it was too late for Mr W to receive the benefit of FIT. And taking into account the lack of FIT benefits being present on the estimated benefits form I don't find there are sufficient grounds to say S misled him about this.

It's also curious that it looks like Mr W's electricity bills did go down after the system was installed. I can't see they only went down by £125 as Mr W asserted. The savings don't correlate to the savings S said he was estimated to make either. From May to December 2018 his electricity bill came to around £3,500 and for broadly the same period after the system was installed in 2019 and 2020 his bill was around £2,500. It's also not clear why he installed another solar panel system if he was unhappy with how the system from S performed.

Overall, while I've carefully considered what Mr W says he was told, given what I've set out above, I'm not persuaded there's sufficient evidence Mr W was misled the system would be self-funding. I don't find I have the grounds to say that Omni's decision to decline the claim was unfair.

I note more recently Mr W has said there is a problem with the system. This relates to a breach of contract claim which Omni hasn't had the chance to consider yet. I'm therefore unable to comment on that further in this decision. Mr W may wish to raise the claim with Omni in the first instance if he's not done so already. If he's unhappy with its response, it may be something our service is able to consider.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 3 January 2024.

Simon Wingfield

Ombudsman