

The complaint

Mr M has complained that Oplo PL Ltd (“Oplo”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

While Mr M’s finance was originally with a different finance provider, Oplo is now responsible for this case. To keep things simple, I’ll mainly refer to Oplo as the finance provider throughout this decision.

What happened

Mr M bought a solar panel system (the system) for his home in 2017. The purchase was funded by a loan from Oplo, and that business is therefore liable for the misrepresentations of the supplier under the relevant legislation. In this case, that relates to the supplier misleading Mr M into believing that the panels would be self-funding, which they weren’t.

Mr M’s complaint was considered by one of our investigators. She thought that the benefits of the panels were mis-represented to Mr M, 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 the 10-year 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.

Oplo (or its predecessor) initially replied accepting our investigators view of the complaint. However, Oplo subsequently reviewed the file and made an alternative offer of redress. It had the system inspected which showed that the system hadn’t been installed correctly and needed rectification work. It has subsequently made alternative offers and clarified its offer multiple times since then. My understanding of Oplo’s offer includes an offer to repair the system, an interim payment in recognition of the losses experienced to date, a promise to monitor the system post repair and make an arrangement for future payments based on the performance of the system post repair. It also offered a payment of £500 compensation for the inconvenience caused and the time taken to resolve the complaint.

Another investigator reviewed the complaint and agreed with our initial investigators view of the complaint. Oplo didn’t agree and maintained that it felt its offer was fair way to resolve the complaint.

As an agreement couldn’t be reached, the case was passed to an ombudsman.

In my provisional decision of 17 July 2023, I set out why I was minded to upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Both parties have acknowledged the provisional decision but didn’t make any further comments.

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.

In my provisional decision I explained the following:

I think Oplo ought now to be 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, as our investigators have previously set this out for Oplo. So, I don't consider it necessary to set all of that out again in this decision.

Mr M says the system has not provided the benefits he was assured it would during the sale. As our investigator has explained, there isn't a lot of documentation available from the time of sale, so I've had to decide what I think most likely happened, based on the available evidence.

Mr M's testimony has been consistent throughout this complaint. Our investigator has also shown Oplo that the supplier was promoting the system as self-funding on its website around the time of sale. So, bearing in mind that the suppliers own promotional material mirrors what Mr M says he was promised, I think it's more likely the system was sold to him as self-funding.

So, having carefully considered everything provided, for the same reasons as those explained by the investigator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mr M 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 Oplo didn't treat Mr M fairly and he lost out because of what Oplo did wrong. And this means that it should put things right. Oplo has made several offers to try to resolve this complaint, so it looks like it accepts this. And the only matter left in dispute, is how to put things right for Mr M.

Fair compensation

Determining fair compensation is not always an exact science and it is all the more difficult in a case like this where solar panels have been installed at a property. I've considered carefully if it's fair to unwind the credit agreement, remove the solar panels (at Oplo's expense) and give Mr M a refund of all the payments he's made (less any actual financial benefit gained from the installation of the solar panels). This would be the usual redress ordered where I'm persuaded that a customer would not have purchased the system but for the misrepresentation.

I've thought about this specifically in this case given the system is not currently functioning as its meant to, wasn't installed correctly and in need of repair. Oplo (and its predecessor) have also caused Mr M significant additional inconvenience by changing its offer a few times.

However, Mr M has indicated he will settle the case based on our investigator's recommendations of alternative redress, so I don't think it is necessary to order a full unwind here.

I've also considered Oplo's offer and while I appreciate its attempt to find a resolution, I'm not satisfied it's a fair way to settle the complaint. Its offer for example is only a temporary solution requiring further monitoring and negotiation post repair. Mr M has already waited almost three years for a solution since he raised his complaint – it provides him with no finality. I have to also bear in mind that Oplo had also changed and evolved its offer several times since it originally offered to settle the complaint so I can see why this would not be acceptable to Mr M. The offer is also not in line with our established approach to redress in these types of cases.

I think that Mr M purchased the panels on the basis that they wouldn't cost him anything – because he was led to believe the financial benefits received would cover the cost of the panels. As explained by our investigator, we have an established approach to redress in these types of cases and we think fair redress would be for the loan to be restructured to effectively make the panels self-funding. The purpose of our redress methodology is to make sure the cost of the solar panels is cost neutral over a 10-year term. So, Mr M pays no more for the panels than what he would likely receive from the panels over the 10-year loan term. I think our approach is a fair and reasonable approach to putting things right. It saves Oplo the trouble and cost of removing and disposing of the system, making good any damage done to Mr M's property, while being able to charge Mr M any benefit he will receive over a 10-year term. Mr M is also only charged what he will likely receive over the 10-year term of the loan, so the system is cost-neutral to him.

But as explained by Oplo, I think it should also repair the system in line with the inspection report it has submitted. Part of the redress calculation Oplo will be required to work out involves making assumptions about how the system will perform going forward. The calculation working out the benefit Mr M is likely to receive over the coming years is based on the system functioning as it is meant to in line with the MCS certificate, so it requires the system to be repaired. This will ensure the system performs as it is meant to – and the redress can be worked out in line with the MCS certificate now submitted.

Putting things right

1. So having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr M's complaint for Oplo to put things right by recalculating the original loan based on the known and assumed savings and income to Mr M 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 M is paying (or has paid) more than he should have, then Oplo 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 M by way of explanation.

If the calculation shows there is a loss, as the loan is ongoing, I require Oplo to restructure Mr M's loan. It should recalculate the loan to put Mr M 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 M 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 M and he continues to make his current monthly payment resulting in his loan finishing early, or*
- D. the overpayments are returned to Mr M and he pays a new monthly payment until the end of the loan term.*

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

2. *Oplo should also have the system repaired in line with the inspection report submitted.*

3. *Oplo has offered £500 compensation for the inconvenience suffered by Mr M and the time taken to resolve the complaint. I'm satisfied that this is a fair offer and I intend to direct Oplo to pay £500 compensation for the trouble and upset caused.*

Alternatively, if Oplo would like to offer a full unwind of the credit agreement, including removing the panels and making good any repairs to Mr M's property (at Oplo's expense), refunding everything Mr M has paid (less any actual benefit received), then it should let me know.

In the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. So, for the same reasons I set out in my provisional decision, I uphold this complaint.

Putting things right

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- 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 M and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr M and he pays a new monthly payment until the end of the loan term.

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

2. Oplo must also have the system repaired in line with the inspection report submitted.
3. Oplo has offered £500 compensation for the inconvenience suffered by Mr M and the time taken to resolve the complaint. I'm satisfied that this is a fair offer and I direct Oplo to pay £500 compensation for the trouble and upset caused.

My final decision

For the reasons explained, I uphold this complaint. Oplo PL Ltd 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 M to accept or reject my decision before 6 September 2023.

Asma Begum
Ombudsman