

## **The complaint**

Mr H has complained about the way Omni Capital Retail Finance Limited (“Omni”) responded to claims he’d made under the Consumer Credit Act 1974 (“CCA”). He’s also alleged Omni irresponsibly lent to him.

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

## **What happened**

The circumstances of the complaint are well known to the parties so I’m not going to go over everything again in detail. But to summarise, in 2018 Mr H entered into a fixed sum loan agreement with Omni to pay for a £8,500 solar panel system through a supplier I’ll call “V”. The total amount payable under the agreement was £13,185.88 and it was due to be paid back with a first instalment of £110.16 followed by 119 monthly instalments of £109.88.

I understand the supply contract was for the installation of 14 solar panels. Mr H raised a complaint with Omni in 2019 due to problems with the system and the monitoring unit. Mr H also raised further issues over the next two years about further problems with the system. Omni dealt with the complaints between 2019 and 2021 and issued final responses.

Mr H raised his current claim and complaint with Omni in 2023. Mr H made claims under section 56 and section 75 and in relation to an alleged unfair relationship taking into account section 140A of the CCA. In summary, he said:

- V cold called him in 2018 to arrange an appointment to discuss solar panels.
- At the time Mr H was 52 and receiving benefits because he was unable to work due to a disability.
- He was sold the solar panels on the basis his property was ideal for the installation; the system would be virtually free and self-funding; his bills would reduce; and V would provide a battery to maximise energy savings.
- He wasn’t allowed to read material from V independently.
- It would assist Mr H given his property suffered frequent power outages.
- The solar panels didn’t perform as promised.
- He needs to find around an extra £100 per month to pay for the system. He wouldn’t have agreed to purchase it had he been told it wasn’t self-funding.
- He wasn’t told the net profit would be affected by the need to replace parts outside of warranty.
- He wasn’t told the system would degrade over time.
- V breached the Renewable Energy Consumer Code (RECC).
- Commission may have been paid.
- The true cost of the system wasn’t explained.

Mr H requested a full refund along with interest.

Omni responded to the claim and complaint in May 2023. It set out how it responded to Mr H’s earlier complaints and explained V had ceased trading. It also set out, in summary:

- Certain things Mr H said were speculative and it was unable to contact V to verify.
- It supplied copies of sales documentation for review, and it was satisfied Mr H was not shown the system would be self-funding.
- Mr H had the opportunity to review the documents prior to the installation, and he had the option to cancel the purchase.
- It's unrealistic to assume the performance wouldn't degrade over time.
- The warranty sets out what parts Mr H is covered for and it's clear he may have been responsible for maintenance outside the warranty.
- There's no dispute there were some problems with the installation, but remediation works were carried out.
- It didn't think misrepresentations had been made and nor did it pay any commission.

Mr H wasn't happy with the response and referred his complaint to our service to consider.

One of our investigators looked into things and contacted Mr H to clarify what complaints he wanted considered. Mr H explained he wanted our investigator to consider the misrepresentations made during the sales process along with the unaffordability of the agreement. Our investigator set out what the loan agreement said. And he also noted a Solar PV Performance Estimate was signed by Mr H that set out:

- The estimated annual generation is 2,587 kWh
- The predicted feed in tariff (FIT) benefit in the 1<sup>st</sup> year is £101.66
- The predicted export income is £67.77
- The predicted electricity savings are £335.68
- The estimated total 1<sup>st</sup> year benefit is £505.11.

Our investigator thought this document was important and that discussions would have centred around it. He thought Mr H would have been able to compare the estimate to the fixed sum loan agreement and would have seen the loan payments exceeded the year one benefit amount. Our investigator noted Mr H wasn't originally intending to take a finance agreement option but once he decided to, the payments on the loan he took out were lower than the original estimate he was given. Our investigator thought Mr H had sufficient information to go ahead with the purchase even after the representations made by V. Our investigator didn't make any recommendations in respect of the section 75 claim.

With regards to the unaffordability complaint, our investigator noted Omni had completed a credit assessment by undertaking a search with the credit reference agencies. He noted Omni saw Mr H had two credit cards and a current account with an overdraft. He said Omni saw one credit card had a balance of around £4,000 against a total available credit of around £19,000, and that there was small use of limited high-cost credit. He said the credit search also showed a mortgage and two hire purchase agreements and that there were no records of missed payments.

Our investigator noted Omni had said it believed the unsecured lending was only a small proportion of Mr H's income, but that it didn't request evidence to confirm his income. Our investigator said the information from the credit reference agencies set out Mr H already had commitments to meet and that it was clear he couldn't rely on the system to pay for the new agreement. Our investigator didn't think Omni had carried out proportionate checks.

Our investigator said had Omni carried out what he thought would have been proportionate checks it would likely have seen Mr H was receiving around £1,500 each month from benefits. Our investigator also calculated Mr H had regular outgoings of around £1,900. So he thought the loan wasn't sustainably affordable.

To resolve things, our investigator said he didn't think Omni should be able to charge interest or make additional charges under the agreement. He said Mr H should only have to pay the cash price for the system – £8,500. He recommended Omni:

- Calculate what Mr H had paid towards the agreement and deduct it from the cash price of the installation. It should agree a revised monthly payment for the outstanding sum.
- Remove any adverse information that may have been recorded on Mr H's credit file.

Mr H responded to say he agreed with the assessment. Omni agreed with the assessment with regards to the section 75 claim, but not the lending aspect. In summary, Omni said:

- The information provided by Mr H was not unreasonable. It didn't flag any concerns and there was no requirement to request payslips.
- The loan went live in November 2018, and he's been paying it on time ever since.
- During all the interactions Mr H had with Omni he never raised the matter of irresponsible lending. He never contacted it to discuss any problems with affordability.
- Mr H passed all its automated credit checks. There was no adverse information present on his credit file for 12 months leading up to the sale.

As things weren't resolved, the complaint 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.

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 H 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.

This decision is focussed on the most recent complaint that was raised with Omni. I'm not going to comment on the previous complaints that Mr H raised and that were dealt with by Omni.

Neither party raised any objections to the findings our investigator made in relation to Omni's handling of the section 75 claim. And our investigator asked Mr H to clarify his complaint points before issuing his assessment. So I'm not going to go over all that again in detail. But, in summary, I agree with our investigator that I don't think we've seen enough to demonstrate V made false statements of fact that induced Mr H into entering the 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 H to be able to understand what was required to be repaid towards the agreement. I'm also mindful the estimated savings documentation that Mr H signed sets out the estimated total year one benefit. And I think this ought to have shown Mr H the savings wouldn't have covered the monthly repayments towards the loan agreement. I think Mr H was given sufficient time to review the forms and query anything he was unhappy about before being committed to the purchase.

With regards to the unaffordable lending complaint, we've explained how we consider these sorts of complaints on our website. I've thought about this approach when deciding this part

of Mr H's complaint. And I've thought about the relevant rules that were in place at the time Omni granted Mr H the credit agreement.

Omni was required to make sure, via its lending decision, that Mr H could repay the borrowing without it having a significant adverse impact on his financial situation. The checks Omni was required to carry out had to be 'borrower focused'. So instead of seeing how statistically likely Mr H was to repay the borrowing, it needed to assess whether he could sustainably repay the borrowing, taking into account his personal circumstances. And it needed to base its creditworthiness assessment on sufficient information.

What is considered proportionate will depend on a number of factors such as (but not limited to): the type, amount and cost of the credit; the financial position of Mr H at the time of seeking credit; Mr H's credit history and his existing and future financial commitments; along with any vulnerabilities.

I've set out above what checks Omni carried out. It said Mr H told it his annual income was £26,000 and he was retired. It said the credit search highlighted he had two credit cards, one of which with a £4,000 balance; a current account; mortgage; two hire purchase agreements; no adverse credit history active or settled and small use of limited high-cost credit. It also said the unsecured lending as a proportion of income was marginal with no use of overdraft facilities.

Mr H has said he doesn't know where Omni received the income amount of £26,000 from because his household income is nearer to £18,500. Omni has said he agreed to this income during the application process. I don't see a reason why Mr H would have over inflated his income in order to receive the funding for solar panels that were going to cost him money every month. I've not seen where he confirmed in the application that the figures V gave to Omni were correct. But I take Omni's point that V is no longer trading as so it wasn't able to obtain sales documentation.

Omni hasn't shown us it took steps to verify Mr H's income. But I also take the point there were no clear signs of financial difficulties such as missed payments or defaulted agreements on the credit search Omni carried out. However, I'm conscious Omni only obtained evidence of some of Mr H's commitments that were shown on the credit search. Some of the commitments it was aware of such as the two hire purchase agreements would likely have had associated costs, which might have been significant. The credit search didn't show the monthly payments to the communications supplier. And Omni didn't ask anything about Mr H's other expenditure either.

While Omni may not have thought the loan repayment represented a significant portion of Mr H's income, I'm conscious the loan was to be repaid over 10 years with repayments of over £100 per month. The total amount payable was around £13,000. This is a significant commitment over a longer term. I can't see the income was verified or that Omni had sufficient information to be able to determine Mr H could sustainably meet the repayments. On balance, I'm not persuaded the checks were proportionate given the amount and duration of the credit agreement.

As, from what I can see, proportionate checks weren't carried out before Omni lent to Mr H, I don't know exactly what proportionate checks would have shown. So I've thought about what Omni likely would have found out had it done so.

Mr H provided us copies of his bank statements from the time leading up to when he entered into the agreement with Omni. Of course, different checks may have shown different things. And just because something shows up in the information Mr H has provided, it doesn't mean Omni would have seen it. But in the absence of anything else, I think it's fair for me to put

weight on his documents as an indicator of Mr H's financial circumstances at the time Omni offered him finance.

Had Omni asked Mr H further questions, or for supporting documentation, I think it likely would have seen the household income was somewhere in the region of £1,650 per month, which is significantly less than what was put on the application. It looks as though Mr H was spending over £1,000 per month towards credit, mortgage and finance agreements. And when you take into account other expenses such as food, utilities, bills, communications, and travel related expenses being over around £500 per month I agree that it doesn't look like the loan was affordable. Had Omni asked further questions through carrying out proportionate checks I think it would have seen that and I don't think it would have decided to lend to Mr H.

I take on board Omni's point that Mr H didn't raise his affordability concerns with it and that his payment record was perfect. But I don't think that's tells the whole story. Like our investigator pointed out, I think Mr H clearly took care in meeting his commitments. But I can also see he took out further credit cards over the next couple of years as well, which might be a sign he was struggling with the commitments. I don't think it's fair to say that just because he didn't complain about the credit sooner that it was affordable. Based on the evidence I've seen, I think there are grounds to say it wasn't.

Therefore, to resolve the complaint, I agree with our investigator that, in the round, a fair outcome is for Mr H to only pay the cash price for the system. I think this would cause a lot less disruption than removing the system, and I'm conscious Mr H has agreed with our investigator's proposals. I agree that deducting the sum Mr H has paid from the cash price and entering into an affordable agreement with him for the balance seems like a fair way to put things right. Our investigator said this can be spread over the remaining term of the loan if required. I agree that sounds fair. I don't think there has been any negative data recorded on Mr H's credit file regarding the agreement, but it should be removed if there has.

### **Putting things right**

I direct Omni to:

- Calculate what Mr H had paid towards the agreement and deduct it from the cash price of the installation. It should agree a revised monthly payment for the outstanding sum, over the rest of the term if required.
- Remove any adverse information that may have been recorded on Mr H's credit file.

### **My final decision**

My final decision is that I uphold this complaint and direct Omni Capital Retail Finance 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 H to accept or reject my decision before 27 March 2024.

Simon Wingfield

**Ombudsman**