

## **The complaint and what happened**

Mr C has complained about Omni Capital Retail Finance Limited's response to a claim he made under Section 75 ('s.75') of the Consumer Credit Act 1974 (the 'CCA').

I've included relevant sections of my provisional decision from February 2025, which form part of this final decision. In my provisional decision I set out the reasons why I was planning to uphold this complaint. In brief that was because I thought that Mr C was induced into buying the battery at the heart of this dispute by misrepresentations, which resulted in there being a loss to him.

I asked both parties to let me have any more information they wanted me to consider. Mr C accepted my provisional findings, but Omni did not, and provided some further evidence for me to consider. That information hasn't changed my mind about the fair and reasonable outcome to this complaint, and I will explain why in the following section.

## **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.

Having done so, I'm upholding it, and I'll reiterate why, but first I've included here the relevant sections of my provisional decision:

### ***What happened***

*In February 2019, Mr C bought a battery for an existing solar panel system from a company I'll call "T" using a 10-year fixed sum loan from Omni. It seems that by 2022 the battery wasn't working, and T replaced it.*

*But in June 2023 Mr C complained to Omni. He said that he was told by T that the money he would make from the battery would cover the cost of the loan repayments, however that hasn't happened, and he's suffered a financial loss.*

*Omni responded to the complaint in its final response: it didn't agree that there had been any misrepresentation by T and so didn't uphold Mr C's complaint.*

*Unhappy with Omni's response, Mr C referred his complaint to our service.*

*An adjudicator considered Mr C's complaint, and he ultimately thought that the evidence available at that time was insufficient to lead him to think that T had misrepresented the benefits of the battery to Mr C, and so he didn't think the complaint should be upheld.*

*Omni accepted the investigator's view. Mr C didn't, and so the case was progressed to the next stage of our process, an Ombudsman's decision. Since the case has been passed to me, I have had a lengthy conversation with Mr C in order to understand the evidence in this case better.*

### ***What I've provisionally 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.*

*Having done so, I'm planning to uphold it, and I'll explain why.*

#### *Mr C's testimony*

*In reaching my provisional decision, I have been persuaded by the testimony provided by Mr C, and I'll explain why. However, I will also say from the outset that, in the round, I don't think his testimony is undermined by the documentary evidence.*

*Mr C confirms that he contacted T via its website, after a family friend suggested that his existing solar panel system was performing well and he thought he might therefore gain benefit from having a battery added to it.*

*He says that he was told by T's representative the battery would bring in twice the monthly cost of the loan and so wouldn't cost anything. I haven't seen any evidence he had any substantial motivation beyond a financial one.*

*I explored this first point in some depth, and asked Mr C to explain how he understood that the battery would bring that money in, and whether that would be via savings on electricity bills. He said that T's representative hadn't really discussed electricity savings and had instead focused on how much electricity Mr C would be able to sell back to the grid as a result of having the battery, and that would amount to well over £100 a month.*

*Omni has set out in its defence of this claim that the real problem is Mr C's solar panel system, and that T's calculations were based on information given to it by Mr C about the system's generation. Which must have been incorrect. I asked Mr C about this, what conversations had taken place, and what information T's representative had gathered about the existing solar panel system in order to calculate the benefit of the battery. He told me that T's representative had not asked anything at all; did not look at the system or its meter; did not request any bills or statements to identify what the system was generating; and had simply looked up at the location of the panels when he came into the house. This is consistent with the documents from the sale, which I will go on to discuss in detail.*

*I asked Mr C about the documents from the sale, what he had copies of, and the role they had played in his conversation with T's representative. He confirmed that all he had received from T's representative was the "blue sheet" showing his signature that he provided at the start of this complaint. This is a 4-page carbon copy of the contract which makes no mention at all of the expected benefits of the battery. He also has retained the warranty for the battery itself. He explained that T's representative did a lot of calculations by hand on a notepad which he took away with him at the end of the visit and didn't leave with Mr C.*

*Bearing in mind what the documentation suggests, namely that the savings the battery will provide will come from him needing to buy less electricity from the grid, rather than him selling it back, I revisited this point again. He again said that he was told the benefit would come from selling electricity to the grid. He told me that, several months after the battery had been installed, he realised it wasn't bringing money in, and called T to ask about why. He said he had been told by a manager at T that the electricity tariffs were about to change and that from January 2020, people would be "queuing up" to buy electricity from Mr C.*

*He says that has never happened and the battery has never made him any money, in any way.*

*Whilst I accept that what he says happened could be untrue, I find that highly unlikely. There was nothing about what Mr C said that felt rehearsed, prepared, or polished. On balance, I find that he was more likely than not providing clear and genuine recollections of the sales meeting which lies at the heart of this complaint, and why he had decided to proceed with the installation of the battery.*

## *The documentation*

*I've looked at the documents provided by Omni to see if there was anything contained within them that made it clear that the battery wouldn't be self-funding. This is obviously an important consideration and Mr C's testimony must be viewed in the light thereof.*

*I have a copy of the loan agreement, which shows that both the total amount payable, and the monthly cost of the loan was clear to Mr C. However, there is no mention on the agreement of the potential benefits of the battery.*

*There is also a 1-page untitled document prepared by T for Mr C, which contains some information about the estimated savings from the battery. It sets out that the benefits that could be expected in year one (£256.08) were less than the finance costs. (These having been set out separately on the loan agreement.) And so it indicated that the system would not be self-funding. Those savings are clearly assumed to result from Mr C being able to use more of the electricity his solar panels produce, and so buy significantly less electricity from the grid. In reaching his view that a misrepresentation hadn't occurred, our investigator placed significant weight on this contract, not unreasonably.*

*However, in my discussion with Mr C, he said he didn't have a copy of the document I was describing and had no recollection of it. He reiterated his understanding from the discussion with the salesman who came to their home, namely that the battery would make him money by enabling him to sell electricity. Which this document does not deal with at all. I am overall minded to place significantly less weight on it than our investigator did, and am comfortably persuaded that it did not play a significant role in the sale of this battery.*

*When we went back to Omni for more information about the sales process and how T had presented the benefits of the battery, it provided us with more documentation. Mr C says he never received any paperwork other than what he sent to us, but in fairness to Omni, I have thought about all of the paperwork as if it were presented to Mr C by T.*

*Of greatest significance is an Excel document, which is called, "Mr C – Savings Calculation tool". This contains six different tabs of information, some of which appear to contain information pertinent to Mr C's battery, some not. While I have scrutinised the document in its entirety, there are two particular sections that I think are relevant to my findings and which I will discuss here.*

*The first is the tab called "Report", which appears to estimate the performance of Mr C's existing solar panel system. Interestingly, I think this supports Mr C's testimony about the information gathered by T in this regard. In short, there appears to be very little in the way of system performance information that seems likely to have come from Mr C. By the time the battery was sold to Mr C, he had had the solar panel system for nearly seven years. So, if it had asked, it would have been very easy for him to provide T with information about the actual performance of that system and how much energy it was regularly producing.*

*However this tab in the spreadsheet appears to me to estimate that performance and production based predominantly on facts such as the roof pitch and how much shade there was on Mr C's roof. I find this strange, given the system had a lengthy track record by this point. It certainly does not seem to me that T performed calculations based on incorrect information provided to it by Mr C. This tab also seems to suggest that the first year's savings from the battery would be £478.72. Not the £256.08 shown on a different document.*

*The tab called "Info" sets out the estimated income from the battery in comparison with the cost over a 25-year period. It seems to suggest that the battery will have paid for itself within six years, and will continue providing earnings/savings for 25 years until it has provided Mr C with over £22,000 of benefit. So, again, I accept this perhaps suggests that the battery would not be self-funding from the outset. However, on this tab it is suggested that the first year's savings from the battery would be £488. Not the £256.08 shown on a different document, or indeed the £478.72 shown on a different tab in the same document. It also has a somewhat orphaned piece of information at the top showing, "Average Savings £1,043.61", which is a simple calculation of the total estimated savings divided by 25 to presumably give an*

*estimated annual benefit. But given the disparity between this timeframe and the loan term, and also the substantial difference between estimated savings in year one versus year 25, I can't see how this figure really provides meaningful information for the reader in understanding cost of the finance against benefits of the battery.*

*Even if I accept that T did share all the documentation with Mr C (about which I have real doubts) I cannot see how that documentation provided a clear explanation to him of the savings/income he could expect to get from the battery. At best, it is contradictory. And so, I think Mr C would have had to look to T's representative to help him understand what the battery would bring in financially and how much he would therefore benefit from it. As mentioned, I've seen no evidence of any motivation other than a financial one on Mr C's part to agree to the battery installation. If Omni can identify one, I would ask it to provide it in response to this provisional decision. Because, based on the available evidence, I think it is more likely than not that Mr C would not have agreed to the installation of the battery if T had made it clear that it would leave him out of pocket. I cannot identify any other logical or rational conclusion at this point.*

*For the battery to pay for itself, it would need to produce savings of nearly £624 per year. Omni says the battery is now performing as expected, indeed it appears to be performing better than expected. Whether that has always been the case, bearing in mind that it was replaced in 2022, is not clear. But Mr C says it has never produced income or savings in anything like that amount. Based on what I can see from the electricity bills provided, I think that is likely true. And I also don't think that is because T's calculations were based on inaccurate information about the solar panel system provided by Mr C.*

*As it would appear that the battery has not produced this in financial terms, the statements I'm persuaded T did make were not true. I think T's representative should reasonably have been aware that Mr C's battery would not produce benefits at this level. And if that is down to T failing to get proper information about the existing solar panel system's performance, then that is not Mr C's fault. Whilst there are elements of the calculations that had to be estimated, I think T's representative would, or ought to, have known that Mr C's battery would not produce enough benefits to cover the overall cost of it, as stated verbally to Mr C.*

*Considering Mr C's testimony alongside the available documentation, ultimately, I think it extremely likely T gave Mr C a false and misleading impression of the self-funding nature of the battery. That may have been as a result of its failings to gather accurate and sufficient information.*

*I consider T's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr C was expected to receive by agreeing to the installation of the battery. I consider that T's assurances in this regard likely amounted to a contractual promise that the battery would have the capacity to fund the loan repayments. But, even if it did not have that effect, they nonetheless represented the basis upon which Mr C went into the transaction. Either way, I think T's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr C's point of view."*

#### *Omni's response to my provisional decision*

As mentioned above, Mr C has tacitly accepted my provisional decision, but Omni has not, and has raised several points in response. I will deal with them now.

- *Inconsistencies between original complaint and Mr C's recent direct testimony.* I acknowledge this, but am satisfied that the fault is likely to lie with Mr C's representative and that there is no reasonable basis on which that should fatally undermine Mr C's detailed testimony to me. In saying that, I would also underline the fact that his testimony is not wholly in opposition to the documentary evidence in this case, as discussed in the provisional decision.
- *The paperwork from the sale does not support Mr C's testimony in terms of where*

*the benefits would come from, namely savings, rather than selling electricity to the grid.* Again, I acknowledge this. But I have already discussed in some detail the role that I think various aspects of the paperwork actually played in the sale – limited at best – and what paperwork Mr C appears to have actually been given by T.

- *The fundamental issue causing Mr C's dissatisfaction is the performance of the solar panel system, not the battery.* I dealt with this at some length in the provisional decision. I am entirely satisfied that T could have easily gathered accurate performance data about the solar panel system to enable it to provide Mr C with clear, fair and not misleading information about the potential financial benefits of the battery. I am equally satisfied that it did not do that, noting that no further evidence or comments on this point have been provided in response to my provisional decision. This complaint turns on whether the benefits of the battery were misrepresented to Mr C by T. If T was negligent in obtaining accurate data on which to base its performance estimates, that does not mean there was no misrepresentation.
- *Mr C caused delays in 2022 when the battery needed replacing, so that needs to be taken into account when compensation is being calculated.* Omni has characterised Mr C's actions here as, "...deliberate client hindrance...", however, I have not seen evidence to support that accusation. But Mr C did accept to me that he effectively forgot to arrange the installation appointment in 2022. And so, I accept that the period of time in 2022 between the removal of the faulty battery and installation of the new one should effectively be excluded from redress calculations.
- *Mr C must provide full documentation to enable a fair appraisal of the benefits he has received as a result of the battery.* This is entirely correct. There are many factors at play in calculating the redress due to Mr C. And indeed, it may ultimately be a modest amount. Mr C will be required to provide the necessary information to Omni to facilitate its actions as set out in the following section.

Therefore, having thought about and responded to Omni's points, I have seen nothing which fundamentally alters my findings as set out in the provisional decision. And so it follows that I uphold this complaint.

### **Putting things right**

In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Mr C's relationship with Omni arising out of T's misleading and false assurances as to the self-funding nature of the battery. So I'm currently planning to direct Omni to recalculate the original loan based on the known and assumed savings to Mr C from the battery over a ten-year term so he pays no more than that, and he keeps the battery.

To do that, it's important to consider the financial benefit Mr C has received by way of energy savings. It does not appear to me that he has sold any electricity to the grid. However, he will need to supply Omni with up-to-date details, where available, of electricity bills both before and after the battery installation; any FIT statements if applicable; current meter readings; and responses to reasonable questions from Omni about his household's electricity consumption. By considering the actual benefits he has received, this will ensure fair redress for any period of time that the battery may not have been working prior to its replacement.

As discussed above, Omni can exclude the period of time in 2022 when no battery was physically installed at Mr C's property.

Whilst I don't believe it will, if the evidence ultimately shows that Mr C has received the financial benefits from the battery to mean that it has paid for itself, then there will be no

compensation to be paid. It is also possible that the amount of compensation due will be a modest one, which is something Mr C should be aware of. It is not my role to calculate the redress due here.

In recalculating the loan this way, his monthly repayments will reduce, meaning that he would've to date paid more each month than he should've done resulting in an overpayment balance. As he has been effectively deprived of the amount of that monthly overpayment, Omni must add 8% simple interest\* from the date of each overpayment to the date of settlement.

Mr C must then decide how he would like his overpayments to be used, choosing from the following:

- 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 continue to make his current monthly payment resulting in the 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 is not able to provide all the details of his meter readings, electricity bills and/or FIT benefits, I am satisfied he has provided sufficient information in order for Omni to complete the calculation I has directed it to follow in the circumstances using known and reasonably assumed benefits. However, he must provide everything he can as promptly as he can to enable Omni to carry out its calculations.

\* If Omni Capital Retail Finance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons I've explained, I uphold this complaint and Omni Capital Retail Finance Limited must put things right as 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 31 March 2025.

Siobhan McBride  
**Ombudsman**