

complaint

Mr M complains that My Planet Ltd gave him false information when it arranged a fixed sum loan for the purchase of a boiler system.

Mr M is being represented by his son.

background

In summary, Mr M says that in July 2013 his boiler broke down and My Planet told him that if he signed up to purchase a £16,000 boiler and paid a £1000 deposit he would get the money refunded through a government funded energy scheme. He says that these promises turned out to be false, and he did not realise he would be responsible for a £25,000 finance agreement.

Mr M's son says that his father has limited English reading and writing ability and he trusted what he was told by the salesperson. His says that, on his father's behalf, he called the supplier about the grant soon after the sale. He says that the supplier told him several times that his father's grant would come through if he waited. He says he has been paying the finance as his father cannot afford it since he is not working and on disability benefits.

My Planet says that it didn't tell Mr M that he would get all his money back through a grant. And although there was some funding available Mr M did not apply for it. It adds that Mr M signed a finance agreement showing what he needs to pay and it told him about the grants that were available at the time of sale. It says that Mr M did not attempt to cancel his contract during the cooling off period and complained 12 months after the installation.

Our adjudicator upheld this complaint. She was satisfied that My Planet had given Mr M false information which caused him to sign up to the finance agreement. She recommended that it take back the boiler, settle the remaining finance, refund Mr M his deposit and pay him £250 compensation.

My Planet disagrees with this. It maintains that it didn't tell Mr M that he would get the cost of the boiler back, but it did make him aware of government funded scheme and savings on his bills. It says that it took a year for it to receive a complaint from Mr M, and it has no evidence that Mr M asked for the boiler to be removed. It says that Mr M could have understood the contract and he spoke articulately on the phone.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I think it is fair to say that My Planet accepts that its salesperson discussed government grants at the time it sold Mr M finance. The dispute appears to be about what type of grant My Planet promised. My Planet says that it would never have promised a grant that would pay for everything, while Mr M says that it did promise this.

I note that a lot turns on what was said at the point of sale in this case. However, the submissions made on behalf of Mr M are credible and consistent. Crucially I find that they are supported by events which took place soon after the sale. I have system notes from the finance provider showing that shortly after the sale Mr M made a complaint about being misled about what he was signing up to. I also have system notes (and a recording) of a call which Mr M's son made to the finance provider in August 2013, around three weeks after the sale. In the call he describes the sales process in some detail and describes what his father says he was told by My Planet. He is clear that his father was told that a grant would pay for everything. In this call Mr M's son is clearly anxious to get to the bottom of the matter. I find this call particularly credible and compelling.

My Planet on the other hand says that Mr M did not complain to it until 12 months later. But I don't believe this is the case. I say this because during the call to the finance company in August 2013 Mr M's son is quite clear that he had already spoken to My Planet about the grant on several occasions but felt like he wasn't getting very far. During the call he makes it clear that My Planet confirmed that the grant would come and that his father had to wait for it. It seems that My Planet led Mr M's son to believe that his father's understanding was correct and that it would eventually send on some paperwork confirming the grant.

Mr M's son has also provided detailed recollections of when and who he spoke to at My Planet. He says he spoke to it shortly after the sale and then continually to try and find out when the grant was coming. He says that it kept telling him to wait for the grant to come through. I find the story to be believable and it explains the length of time it has taken for the complaint to eventually get to this stage.

I note that the documentation which Mr M signed does not expressly contain information to say that a grant will pay off the product. However, I think that in this case Mr M placed fair and reasonable reliance on what he was told by the salesperson. From Mr M's son's credible submissions, and the wider evidence I believe that Mr M's second language is English, and that he was probably unable to properly read and understand the written contract. I also note that the documentation Mr M received does not expressly contradict his understanding of what he says the salesperson told him.

I have not carried out an affordability assessment here. However, I do find it significant that Mr M's finances at the time of sale strongly indicate that he would have been less likely to have signed up to finance product like this when there were cheaper alternatives available. I find that it supports the argument that he was told that a key benefit was that he was actually signing up to get the product funded by a government energy grant.

My Planet says that smaller grants were available to Mr M but he never applied for them. In July 2014 it wrote to him to say that he was too late to apply for one of the grants. I find it hard to understand why Mr M would not have applied for grants if My Planet had been clear about how things worked from the start. In fact Mr M's son says he spoke to My Planet many times about the government funding but it didn't mention these other grants until much later. I also note that in July 2014 My Planet wrote to Mr M and gave the impression that he could go ahead and apply for a different grant, yet in August 2014 it wrote to him to say that he couldn't apply for that particular grant until he had a certain meter installed. It seems that My Planet hasn't been very clear with Mr M about the grants and his eligibility for them. I find it likely that it wasn't very clear with him at the time of sale.

My Planet has pointed out that Mr M did not use his 14 day cooling off period. It has said that he could have asked his son to look at the paperwork during this time. However, the purchase contract actually gives a 7 day cooling off period so I am not sure why My Planet would say this. However, if I accept that Mr M reasonably believed that the grant would still come through based on what My Planet told him, I don't see why he would have cancelled the contract during this period anyway. Also, I note that the installation was carried out 3 days after the purchase, apparently cutting short the time Mr M had to cancel. Mr M's son says that by the time he found out what his father had signed (when he returned from holiday) the unit was already installed and My Planet refused to remove it. My Planet says that they did not receive a request to remove the boiler, but this seems unlikely based on the surrounding evidence. Overall, I don't think that Mr M could be criticised for not using the cooling off period in this case.

Ultimately I find Mr M's submissions to be consistent and credible and they are supported by the prompt complaint after the sale. I don't think that My Planet has been very clear about the subject of grants, and I don't believe that it didn't hear from Mr M or his son for a year. I think there has probably been a misrepresentation by My Planet which caused Mr M to sign up for a finance agreement that he would not have signed up to otherwise. Therefore, Mr M should be put in the position had he never entered the contract.

I accept that Mr M has had some use of the boiler so shouldn't be refunded the monthly payments made to the finance so far. However, My Planet should settle the remainder of the finance and take back the boiler. It should also refund Mr M his deposit along with some compensation for the distress and inconvenience caused to him by its actions.

my final decision

I uphold this complaint and direct My Planet Ltd to:

- remove the boiler at no further cost to Mr M;
- settle the finance agreement so that Mr M has no further liability under it;
- refund Mr M his £1000 deposit plus simple interest at 8% a year from the date of payment until the date of settlement;
- pay Mr M £250 compensation.

If My Planet considers it should deduct tax from my interest award it should provide Mr M with a certificate of tax deduction so he may claim a refund, if appropriate.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 13 July 2015.

Mark Lancod
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