

complaint

Mrs W is unhappy that her claim against Creation Financial Services Limited for a faulty solar power battery system under Section 75 of the Consumer Credit Act 1974 (the 'Act') has been declined.

background

In October 2016, Mrs W and her husband, Mr W, contracted with a supplier, E, for the installation of a solar power battery system. Mr and Mrs W say they were told by E's salesman that the battery would be fitted by their own team of installers and that the battery would enable them to store enough free energy from their solar panels to meet their home's needs.

Mrs W paid £1,248 of the £4,995 cost of the battery and installation on her credit card with Creation. Mr and Mrs W have said that the battery never worked properly. It tripped within 10 days of being installed. E came out and re-set the system, but this tripped again shortly afterwards. E told Mr and Mrs W that there was no fault and that they'd just need to re-set the system from time to time.

Mr and Mrs W attempted to reject the battery system, although E refused to accept that anything was wrong. So, they brought a claim to Creation under Section 75 of the Act. They sought to make it equally responsible with E for the battery failure and requested that it be removed, the electrics reinstated and that they be refunded the full cost. Creation rejected their claim and the subsequent complaint that they brought to it. Creation said that there was insufficient evidence to show the battery wasn't working. So, Mrs W brought a complaint to this service.

Mr and Mrs W recently obtained a report from a solar engineer who said that when he attended the battery wasn't working. He didn't want to take it apart as this might void any warranty. But as far as he was concerned, the installation looked fine, but the battery was 'dead'. He also found that their solar panel inverter was 'failing' and quoted Mr and Mrs W for its replacement.

Our investigator recommended that Mrs W's complaint be upheld. She found that the battery was likely never to have worked properly. And so was more likely than not faulty from the time it was installed. She recommended that Creation remove the battery, reinstate the electrics and refund the cost of installation plus interest. She also awarded £100 for the trouble and upset Mrs W had been caused. Creation didn't agree and has requested an ombudsman's decision.

Amongst other things, Creation said that:

- there's insufficient evidence that the battery wasn't working since it was supplied;
- the proposed resolution isn't in line with the Consumer Rights Act 2015 as a repair needs to take place before a replacement is provided;
- the investigator referred to the system being self-funding which isn't relevant here;
- the expert's report is insufficient and was provided three years after installation; and
- the fault identified was a tripped switch and not a faulty battery.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Creation will be disappointed to hear that I agree with our investigator that this complaint should be upheld. I'll explain why.

Fundamentally, Creation's concern appears to be that the battery has not been shown to be faulty. And if it is, then a repair would be a more appropriate remedy than decommissioning the system.

The timeline of events here is that the battery system was fitted in October 2016. Within 10 days the battery was no longer working. This was reported to E who sent out an engineer a few days later. The engineer stayed for about five minutes and re-set a trip switch. The problem re-occurred a few days later.

Creation thinks that this proves the battery was working and that the problem could well be with something else in the Customer's electrical system. But I disagree. It's my finding that the battery system was more likely than not faulty from the moment it was installed. Mrs W's contract with E was for a battery system to be fitted. And she could reasonably have expected that to work with her existing electrical installation and the solar panels that she already had. That's what E had contracted with her to install. And it will have had the opportunity to inspect her current system before it did so.

Mrs W's evidence is that the system has never worked. It also hasn't lived up to the salesman's representations that this would allow them to store enough of the electricity generated by the solar panels for all their needs.

I've considered the relevant provisions of the Consumer Rights Act 2015. And I don't agree with Creation that Mrs W is under any obligation to prove the reason why the battery system is faulty. I've found that it didn't work from almost immediately after its installation. And there is an expert's report that says the system was installed correctly but describes the battery as 'dead'. I appreciate that this report was obtained a few years after the installation. But even without the report, it's clear that the battery has never worked properly. And Creation has declined the opportunity it was given to get its own report.

E was given an opportunity back in November 2016 and then over the following months to come in and fix the problem. Its engineer just re-set a tripped switch. And said that if that was to happen again it would be Mrs W's responsibility to re-set the switch. But nothing was done to identify why the switch was tripping in the first place. So there has already been an opportunity here to fix the problem and that hasn't been taken up.

It's also noteworthy that E went into insolvent liquidation a few months after the battery was fitted. And there is evidence from the salesman that E instructed him to make representations about the package on offer that have turned out not to be true. So, I do think it was fair and reasonable for Mrs W to reject the system and request a refund.

Creation has said that Mrs W's rejection of the system took place after the six-month period provided by the Consumer Rights Act 2015. But that's not the case. Mrs W's representative was appointed in November 2016 and was in correspondence with both E and Creation over the months following that.

So, I'm satisfied that Mrs W did identify the problem and that she gave E an opportunity for it to be fixed before she then rejected the system within the six months set out in the Consumer Rights Act 2016. Both E and Creation could have taken the opportunity to send in their own expert to examine the system and identify any fault that was causing it to trip. But they didn't.

I'm sorry that our investigator appears to have confused one of the issues in her written opinion. This isn't a complaint about a misrepresentation that a solar panel system would be self-funding. But Mrs W's representative has alleged there were some misrepresentations about the sale of the battery system. These included that it would be fitted by E's own professional installers, rather than the sub-contractor that turned up to do it. And, that together with the solar panels, it would provide enough free energy to run their house.

I have considered this aspect of Mrs W's complaint. But given my finding that she was entitled to reject the system, I don't propose to go into much detail about it here. Suffice to say, there is evidence that the use of E's own fitters was important to Mr and Mrs W. And there does appear on the face of it to have been a misrepresentation. However, I don't consider that this on its own meant it would have been fair and reasonable for the entire contract to have been unwound.

The self-funding which our investigator intended to refer to was that the system would provide sufficient energy to run the house. That clearly hasn't happened as the battery wasn't working. But I can't say from the evidence available that this was a misrepresentation - given that if it had worked, it may well have stored enough electricity to provide for most of their needs, depending on how much electricity they used. But again, this is academic in terms of my previous findings.

Under Section 75 of the Act, Creation is equally responsible with E for the customer's loss. And the appropriate remedy here is that they be put back into the position they would have been but for E's failings. Here, I've found that the battery system installed was, more likely than not, faulty from installation. An opportunity was given for it to be repaired, although the fault continued to be apparent. An expert has said that the battery is 'dead' and there's no evidence to the contrary that something else in Mrs W's home has caused the problem - as Creation alleges may be the case.

In determining what is fair and reasonable compensation, I have considered whether it would be appropriate to require that Creation attempt a further repair. But both E and Creation were given ample opportunity to repair this in early 2017. And the system hasn't worked since it was installed. Mr and Mrs W understandably no longer want it. And haven't since it failed to work immediately after installation. So, I think that the fair and reasonable outcome here is that which our investigator recommended.

I also think that Mrs W has clearly experienced some trouble and upset as a result of the way in which Creation dealt with her claim - in particular, Creation's requirement that she prove there was a problem with the battery, when it had clearly been shown not to be working. So, I think £100 compensation for the way this made her feel is fair and reasonable.

my final decision

It's my final decision to uphold this complaint against Creation Financial Services Limited. I require that it:

- refund Mrs W the full purchase cost of the battery system;
- pay 8% simple interest* a year on that sum from the date it was paid to the date of repayment;
- make arrangements for the battery system to be decommissioned and removed and for an electrician to certify that any electrical work done is safe; and
- pay Mrs W £100 for the trouble and upset caused.

*HM Revenue and Customs require that Creation deduct tax from the interest payable to Mrs W. Should Mrs W request it, Creation should provide confirmation of how much tax it has taken off so that Mrs W may reclaim it if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 8 July 2020.

James Kennard
Ombudsman