

complaint

Mrs Y has complained that Creation Financial Services Limited has not accepted her claim for a refund of the costs of solar panels, which she believes were not those that she thought she had purchased.

background

In 2013 Mr and Mrs Y received a call from a representative of a company selling solar panels. They were interested in the product and met with the representative, however they were told that their application for finance was not successful. Within a fortnight, the same representative told them he had found another credit provider. They agreed to the work being carried out and Mrs Y signed a fixed sum loan agreement with Creation.

Within a short time after installation, Mr Y discovered that the system they had fitted was not as he had expected. He raised an immediate complaint with the supplier. At this stage, the supplier told him that they hadn't supplied the solar panels, and Mr and Mrs Y's supplier contract was with another firm. It turns out that the company representative had changed companies.

Mrs Y complained to Creation in November 2013. Creation tried to negotiate a deal which would enable Mrs Y to keep the solar panels but works were done to ensure it was what she and her husband thought they were buying. Nothing came of this. Mrs Y complained to the ombudsman service.

Our adjudicator felt that Mrs Y had been misold the solar panels and had been misled about the provider, even though their contractual information was in the name of the company who installed the solar panels. As suitable redress she recommended Creation to reduce the total amount payable under the agreement by 75% without any modification to the system Mr and Mrs Y have in place. Creation told her that the supplier did not consider this fair and this case has therefore been passed to an ombudsman for review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive, or contradictory, as some of it is here, I reach my decision on a balance of probabilities – that is to say, what I consider is most likely to have happened in the light of the evidence that is available and the wider surrounding circumstances.

It's worth saying upfront that I am aware that the contract information that Mr and Mrs Y signed is in the name of the supplier who fitted their solar panels. However I find their evidence and subsequent behaviour extremely credible. Specifically I can easily see why they felt that they were buying solar panels from the original company. After all the representative was the same. In addition they were very conscious of what the solar panels they were buying were going to offer them. As soon as they found what was installed was different, they raised a complaint immediately. This means that on balance I am satisfied that the solar panels and the supplier were misrepresented to them. It is therefore fair that Creation is held liable for this.

During the course of Mrs Y's complaint with Creation, they accepted that they would recommend upholding this complaint. However they did not accept the solution proposed by our adjudicator, although this was acceptable to Mrs Y. I broadly agree with our adjudicator's assessment. The normal redress for misrepresentation is for the customer to be put in the position they would have been prior to entering the contract. However Mrs Y has already had workmen tramp through her house and I believe that getting the supplier in to remove the panels completely, would only involve more disruption.

Therefore I believe it is fair that Mrs Y should be allowed to keep the solar panels. Obviously it would not be fair for her to pay nothing for this so I am satisfied that the total amount payable under her agreement should be reduced by 75%. I know that since our adjudicator wrote her view, we have been told that the solar panels are not working as well as Mr and Mrs Y thought they would and their electricity bills have not reduced. I believe this 75% reduction in cost will also provide them with compensation for this aspect too. However I want to stress that the system should be working to the best of its ability and Creation has a responsibility to ensure that it does.

Mrs Y's agreement is for 10 years and she's currently paying nearly £140 a month. She may want to take this opportunity to reduce the period of time over which she pays this agreement, or reduce her current payments. I consider it reasonable that Creation enters into an appropriate arrangement with her, depending on what she wants to do.

I know that Creation has told us that the supplier does not feel this resolution is fair and considers us "*misguided*". I do not agree with that view. In fact as I believe this was missold, I am satisfied that this resolution offers the fairest option to both parties.

Mrs Y was also concerned that Creation accepted a customer satisfaction statement that was signed by her husband even though the finance agreement was in her name. Like her, I believe this is odd. However reviewing this has had no overall impact on my decision about redress which I still consider to be fair in the circumstances.

I will add that I have been concerned by the time it has taken to resolve this case. Mrs Y first complained to Creation in November 2013. By March 2014, this remained outstanding. As Creation themselves said in correspondence "*FOS would not see this as good [complaints] handling*". No final response was ever provided. Whilst I do not doubt the good intentions of the person at Creation trying to manage the complaint, I have seen nothing to show that the company ever accepted their responsibility and liability to lead the resolution of this complaint. The comments we received from Creation were always those of the supplier, and not themselves as the finance provider. I have told Creation that as their management has delayed resolving this complaint, I consider it fair that they pay Mrs Y an additional £250 for the inconvenience caused.

my final decision

For the reasons stated above, my final decision is to uphold Mrs Y's complaint and instruct Creation Financial Services Limited to:

- Reduce the total amount payable under Mrs Y's fixed sum loan agreement by 75%, taking into account my comments above; and

- Pay Mrs Y £250 for the inconvenience caused by poor complaints handling.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs Y to accept or reject my decision before 6 February 2015.

Sandra Quinn
ombudsman