

## Complaint

Mr W is unhappy with the response of Hitachi Capital (UK) Plc ("Hitachi"), following a claim against it under section 75 of the Consumer Credit Act 1974 ("the Act").

## Background

Mr W was contacted by a company, which I'll refer to as "F", that supplied and installed solar panel systems. Following a meeting at his home, Mr W agreed to enter into a contract with F for it to supply and install a solar panel system costing £5,500. To fund this, he also agreed to enter into a 10 year fixed sum loan agreement with Hitachi.

Mr W has said that F didn't provide him with the necessary information for him to complete his feed-in-tariff ("FIT") application. As a result of this, he wasn't in receipt of his FIT income for around a year after the installation. When his application was finally submitted, the rate he was be paid for every kWh produced by his solar panels had significantly reduced. Therefore, Mr W said that F had breached the contract it had with him. As F was no longer trading, Mr W, raised a claim under section 75 of the Act with Hitachi.

In its final response letter, Hitachi made an offer to resolve Mr W's complaint. It said that although he had contacted F in March 2015 about his FIT application, he hadn't followed this up until almost 12 months later before finally submitting his application in May 2016. On that basis, without admission of liability, it was willing to pay him the difference between the rate in March 2016 and May 2016, about £26. Unhappy with this response, Mr W referred his complaint to our service.

During our investigation Mr W's roof was leaking. Hitachi arranged for an independent inspection of the roof which highlighted that the installation had been poorly carried out, causing damage that had resulted in water ingress into Mr W's home. This had also, in turn, caused internal damage to Mr W's home. Hitachi have since arranged for the necessary repair work to be completed to make Mr W's roof watertight. It has also asked him to provide 2 quotes for carrying out the internal decoration.

Mr W also told our investigator that F had told him that his solar panel system would be 'self-funded' and that his monthly loan repayments would be more than off-set by the FIT income and savings he'd make on his energy bills. But this hadn't been the case. Instead, his monthly loan repayments had been much higher.

Following information provided by both Mr W and Hitachi, our investigator issued her final view. She thought that F had misrepresented the benefits of the solar panel system to Mr W and breached its contract. To put things right she said that Hitachi should work out the potential income and savings to Mr W, from the solar panel system, over the 10 year term of the loan. It should then recalculate his loan to ensure he paid no more than this. This would have the effect of making his solar panels cost neutral.

The investigator also thought that for the 10 year period after the loan term Hitachi should also pay Mr W the difference between the FIT rate he is currently receiving and the rate he would have got if he had been provided with the necessary information to complete his FIT application when the panels were installed.

She was satisfied that it was fair Hitachi has made Mr W's home watertight and that he should provide it with two quotes for the necessary internal decorations. Due to the trouble and upset caused, she also thought that Hitachi should pay Mr W £300 to recognise this.

Mr W accepted the investigators view. As Hitachi didn't the complaint has been passed to me to review.

### **my findings**

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

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I would consider to have been good industry at the relevant time.

In this case the relevant law includes section 56 and section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit. It states:

*"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in the respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor."*

As Mr W paid for the solar panels with a fixed sum loan agreement, Hitachi agrees that section 75 applies to this transaction. This means that Mr W could claim against Hitachi – the creditor – for any breach of contract by F in the same way he could have claimed against F, the supplier. So, I've taken section 75 into account when deciding what is fair and reasonable.

Section 56 is also relevant. This is because it says that any negotiations between Mr W and F, as the supplier, are deemed to have been conducted by F as an agent of Hitachi.

If there is a dispute about what happened, I must decide on the balance of probabilities – that is, what I consider to have been most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

### Was there a misrepresentation?

Mr W has said that he was contacted by F and at a sales meeting told that the solar panel system would be entirely self-financing. I haven't seen anything to show that Mr W had previously enquired about solar panels before he was contacted by F. It is hard to see why he would have agreed to the installation, paid for by a loan, which would increase his monthly outgoings. And based on this, I think it's unlikely that he would've agreed to the solar panel system and a loan with Hitachi, unless he had been led to believe that the system would be self-funding and come at no cost to him.

Having carefully considered the available evidence, like the investigator, I think that F did misrepresent the benefits of the solar panel system. Hitachi has accepted the investigator's view on the misrepresentation of the benefits of the solar panel system.

I'll consider below whether it's offer, to make the solar panels cost neutral over the term of the loan, is fair.

### The FIT application

Mr W has said that during the meeting with F at his home he was told that the FIT rate he would receive would be around 13p/kWh. The salesperson told Mr W that the FIT rate would shortly be reducing so he needed to make his application as soon as possible to guarantee the higher rate.

Mr W tried to complete his FIT application with his energy provider but, didn't have all the necessary information required. He contacted F and provided it with his partially completed form alongside a copy of his passport and driving licence so it could complete and submit the application on his behalf. Mr W has provided some emails to support this.

Hitachi has said that F offered to complete the FIT application form as a "gesture of goodwill", and that Mr W didn't try to contact F again to chase this up for around 9 months until the day the rate was due to change. It also said the onus was on Mr W to complete the form and as FIT payments are made quarterly, he should have realised sooner that his system hadn't been registered.

I've thought carefully on the points raised by both Mr W and Hitachi. Having considered the FIT application form, I've noted that the questions Mr W was unable to answer were technical questions about his installation. These included questions around the "Total Installed Capacity (kW)" of the system, his generation meter and a question around exported electricity. The FIT form also says:

*"These questions refer to your generation station on site. If you are unsure on any answers we recommend speaking to your installer who should have all the necessary information".*

Therefore, I don't think it was unreasonable for Mr W to contact F for its help, as the application form suggests. And I also think that F should have provided Mr W with all the information he would have needed to complete the form.

I've also considered the emails that Mr W has provided between himself and F. These include the email where he provided the application form with what he had completed alongside copies of his passport and driving licence. I think it is unlikely that Mr W would have provided copies of his personal identification documents unless he had been told that F would be making the application for FIT on his behalf.

I've also considered the delay between Mr W originally providing F with the necessary information and him following this up. My understanding is that the delay was due to a change in Mr W's personal circumstances and I can understand why his FIT payments may not have been at the forefront of his mind until he saw that the FIT rates were changing in January 2016.

Taking the above into account, I'm of the view that the reason Mr W isn't receiving the FIT rate he should have, and that he didn't receive any FIT payments for the first year of his installation, is due to F's failure to complete and submit his application, as it said it would.

### Damage to his home

Mr W has said that the installation of the solar panels caused damage to his roof and led to water ingress into his home causing damage to the internal decorations.

Hitachi has already arranged for an inspection of Mr W's roof which has concluded the damage was caused by the poor installation of the solar panels. As I understand, the repair work has already been completed and Mr W's roof is now watertight. I consider this to be fair.

Hitachi has also agreed to pay the costs of carrying out the repairs to the internal decorations. It has asked Mr W to provide two quotes for necessary work. Again, I'm satisfied that this is fair.

#### Fair compensation

The role of this service is to help settle disputes between consumers and businesses providing financial services fairly and reasonably with minimum formality. In cases like this one, determining fair compensation isn't an exact science. My role is to arrive at a fair and reasonable outcome taking account of the particular circumstances.

Hitachi has offered to restructure Mr W's loan so that his loan repayments match the expected benefits he is due to receive from his solar panel system. This would make his system cost neutral and allow him to retain the system. I think this is a fair outcome as it puts Mr W in a position where his solar panel system is self-funding over the original term of the loan. By allowing Mr W to keep the panels, I'm satisfied that he will likely benefit from lower electricity bills and FIT payments going forward (i.e. after the loan term has finished).

When it calculates the expected benefits Mr W is due to receive Hitachi should take account that Mr W wasn't in receipt of FIT payments for the first year due to the delay in the registration of his panels.

By making the solar panel system self-funding it's likely that Mr W will have been paying more each month than he should have been. Hitachi should add 8% simple interest to any overpayment made and allow Mr W to choose from the below four options of how he'd like his overpayments to be used:

1. the overpayments and associated interest are used to reduce the outstanding balance of the loan and he continues to pay his current monthly loan repayment resulting in the loan finishing early,
2. the overpayments and associated interest are used to reduce the outstanding balance of the loan and he pays a new, lower monthly loan repayment until the end of the loan term,
3. the overpayments and associated interest are returned to Mr W and he continues to pay his current monthly loan repayment resulting in the loan finishing early,
4. the overpayments and associated interest are returned to Mr W and he pays a new, lower monthly loan repayment until the end of the loan term,

I'm satisfied that it was due to a failure by F, to submit Mr W's FIT application, that he is receiving a lower FIT rate. When calculating the benefits he is likely to receive over the loan term to make his system cost neutral I'm of the view that Hitachi should use the FIT rate he was registered for. This will ensure his loan repayments are met by the benefits he is due to receive.

I'm also of the view that Hitachi should compensate Mr W for the consequential loss that flows from F's failure to register his panels for the FIT rate applicable at the time his panels were installed. Therefore, Hitachi should calculate the difference between the FIT rate Mr W is receiving and what he should have been receiving if his system had been registered when it was installed as a lump sum. This calculation should be for the period after the term of the loan i.e. for the remaining 10 year period he is due to be receiving FIT payments.

I have no doubt that what has happened has caused Mr W trouble and upset. His home has been damaged, and he has had to carry out remedial repair work. Consequently, I'll make an award of £300 to reflect this.

### **My final decision**

My final decision is to uphold Mr W's complaint. In full and final settlement of it, I require Hitachi Capital (UK) Plc to:

- allow Mr W to keep the solar panels,
- estimate the potential savings and income to Mr W from the panels over the 10 year term of the loan and rework it so he pays no more than this. This should take into account that he wasn't in receipt of FIT payments for the first year. Where possible, it should use Mr W's electricity bills and FIT statements to do this,
- add 8% simple interest\* to any overpayment made from the date the overpayment was made to the date of settlement,
- allow Mr W to decide how his overpayments should be used, using the four options described above,
- pay for the necessary repair work to the internal decorations on receipt of two quotes,
- pay Mr W a lump sum to reflect the difference between the FIT rate he is in receipt of and what he should have been receiving for the remaining life of the panels after the loan term; and,
- pay Mr W £300 for the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 May 2021.

\*If Hitachi Capital (UK) Plc considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr W how much it's taken off and also give him a certificate showing this, if he asks for one, so he can claim the tax back from HM Revenue & Customs.

Michael Fisher  
**ombudsman**