

The complaint

Mr V has complained that Omni Capital Retail Finance Limited (“Omni”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr V bought a solar panel system (“the system”) for his home in 2018. The purchase was funded by a loan from Omni, and that business is therefore liable for the misrepresentations and/or breach of contract of the supplier under the relevant legislation. In this case, Mr V alleges that the supplier misled Mr V into believing that the panels would be self-funding.

Mr V’s complaint was considered by one of our investigators. They thought that the documents from the time of sale (which Mr V signed) made it clear that the benefits of the solar panel system would not cover the cost and therefore the system would not be immediately self-funding in the way Mr V says he was led to believe. So, the investigator did not think a misrepresentation had taken place.

Mr V (through his representative) disagreed for the following reasons:

- Mr V reiterated that he was advised verbally the benefits would cover the costs.
- That he was not shown the figures contained in the documents and only told where to sign.
- There is only one signature in the second page of the sales contract, not on each page of the document, so Mr V’s representative feels there’s no proof Mr V saw these figures to be able to realize that what he was being told verbally was untrue. They feel Omni should have to prove that he was shown the documents side by side that would have enabled him to compare the figures contained in the document.
- He says he would not have taken the loan if he’d understood the benefits wouldn’t be sufficient to cover his costs given his financial position at the time of sale.

As the complaint couldn’t be resolved by our investigator, I was asked to make a decision.

In my provisional decision of 23 November 2023, I set out why I was minded to not upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Mr V didn’t reply. Omni appeared to accept my findings and added further commentary to support its position.

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.

In my provisional decision I explained the following:

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.

As Mr V paid for the system with a fixed sum loan agreement, Omni agrees that section 75 applies to this transaction. This means that Mr V could claim against Omni, the creditor, for any misrepresentation or breach of contract by the supplier in the same way he could have claimed against the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

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

For the purpose of this decision, I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

Having carefully considered everything provided, for broadly the same reasons as those explained by the investigator, currently, I do not uphold this complaint.

I'm satisfied that Mr V was provided with the sales documents, and it seems likely that he would've seen these at the time of sale, as he has signed the documents.

The contract for the sale of the solar panels sets out the cost of the solar panel system on the same document as the total estimated year 1 benefit provided by the solar panel system.

→ £ 879.80	Your estimated total annual benefit accumulated from the combined values of your FIT, export tariff and electricity saving
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I think it's clear that the total annual estimated benefit Mr V could expect to receive from the system was £879.80.

If paying by finance	
Commonly Asked Questions	<input type="checkbox"/>
Loan Pre-Contract	<input type="checkbox"/>
Fixed Sum Loan Agreement	<input checked="" type="checkbox"/>
I understand I will make	<input type="text" value="120"/> monthly repayments (max).
I understand my monthly repayment is	£ <input type="text" value="148.59"/>
The total maximum amount I will pay is	£ <input type="text" value="17,830.80"/>

The cost of the system is also recorded in the contract – and the section for finance has been completed. So, it looks like Mr V was aware he'd be taking out finance. The above section records that Mr V's loan term was 120 months, that his monthly payment was 148.59 and the total amount repayable is also noted on there – and this was over £17,800.

None of these figures are hidden away in small print, but are, in my view clearly visible. And Mr V has signed this document.

On the same day, Mr V also signed the credit agreement which set out the cash price of £11,495, the monthly payment of £148.59, the total amount payable of £17,830.80, as well as the term of the loan which was 120-months (i.e. 10 years).

I've considered Mr V's argument that there isn't a signature on each page of the documents, but the documents aren't particularly long, and both the documents I've referred to above are the solar panels contract and credit agreement – which are important documents integral to the sale. I think it's highly unlikely that Mr V signed these documents as many times as he did but didn't see any of these figures. I also think it's unlikely that the sales representative would tell Mr V to sign these documents that clearly highlight the estimated benefits and costs but verbally mislead him with other figures.

Usually, the sale documentation reflects the nature of the discussions that took place at the time of sale, and I've seen nothing to suggest that this didn't happen here.

So, I'm persuaded that it's more likely the supplier discussed the estimated benefit the system would likely produce as well as clearly setting out the cost – and that is reflected in the documents Mr V has signed.

I also think it's apparent that to repay a loan for over £17,000 over 10 years, Mr V would need at least £1,700 to meet the annual repayments of the loan, and the total annual benefit amount falls significantly short of that. I also think it's apparent that 12 payments of £148.59, amounts to more than £879.80.

Overall, I think it's more likely that it would have been clear to him that the solar panels would not be self-funding in the way he says he was told they would be.

If Mr V had been told something different, on being asked to sign these documents, I would have expected him to have questioned what he had been told. I've seen no evidence that he did, so I think that suggests that the document most likely did not contradict Mr V's understanding, at that time.

While I've carefully considered Mr V's testimony, I find the documents from the time of sale to be more persuasive in terms of what information he was likely given at the time of sale. So, on balance, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint.

Mr V has raised concerns over whether Omni carried out appropriate credit checks before granting the loan. Omni says Mr V's application passed all its automated credit checks such as no adverse information being present on his credit history for the 12 months leading up to the sale. Additionally, Omni says all payments have been maintained by Mr V. And despite Mr V contacting Omni about the system, he has never mentioned any concerns with affordability. Based on everything I've seen, I think the loan was affordable at the time of sale, so I don't uphold this complaint on this basis.

Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that there were no untrue statements of fact made by the supplier that induced Mr V to enter into the contract for the system, and I have found no other reason to uphold this complaint. So, I don't think Omni acted unfairly by declining Mr V's claim.

Omni said that it has previously had various exchanges with Mr V regarding remediation works carried out on the system (as part of a separate complaint). Throughout this, Mr V never raised any concerns about the system benefits not meeting his expectations, not being self-funding, nor did he make any comments about the affordability of the loan. Mr V, as explained above, did not make any additional submissions in response to my provisional decision.

I do accept that if Mr V had difficulty with repaying the loan and couldn't afford it, I would have expected him to raise this with Omni, so this further supports my findings. Overall, having reviewed this complaint again in its entirety, and in the absence of any other points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. I'm still satisfied that there were no untrue statements of fact made by the supplier that induced Mr V to enter into the contract for the system, and I have found no other reason to uphold this complaint. So, I don't think Omni acted unfairly by declining Mr V's claim.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 10 January 2024.

Asma Begum

Ombudsman