

The complaint

Mr M has complained that MBNA Limited ("MBNA") rejected his claim against it under Section 75 of the Consumer Credit Act 1974. A representative (the CMC) is assisting Mr M with his complaint.

What happened

Mr M bought a battery storage system and a voltage optimiser (VO) for his home in 2018. The purchase was funded with an MBNA credit card, and that business is therefore liable for the misrepresentations made by the supplier under the relevant legislation. In this case, Mr M alleges that the supplier made a number of misrepresentations including:

- Mr M was promised his bills would reduce by 65% but this hadn't materialized.
- The battery storage system would reduce his electricity bills by 50%.
- That the VO would reduce his bills by 15%.
- He says he was told he would recoup his costs in eight years and receive a profit of around £6,500.

Mr M says these representations have turned out to be untrue and that he has only made nominal savings. In 2019, Mr M raised a complaint about this. MBNA said Mr M had provided no evidence of the misrepresentations, so it did not uphold his complaint. So, Mr M (through the CMC) referred the matter to this service.

Mr M's complaint was considered by one of our investigators. He also felt that Mr M hadn't provided any evidence of the misrepresentations so did not think his complaint should be upheld.

The CMC didn't agree for the following reasons:

- The CMC felt the approach taken by our investigator is inconsistent with other areas of renewable energy such as solar panels where it's accepted that there was large scale mis-selling. Often in those cases there is nothing to corroborate a customer's testimony, but complaints are still upheld.
- Our established approach to redress in those cases is to ensure that solar panels are self-funding over a certain period of time. And the CMC didn't understand why this service accepted that Mr M would buy these products despite the fact that they wouldn't be self-funding.
- Mr M wasn't given any documents or statements in writing so he cannot submit what he doesn't have.
- The CMC says Mr M would have no reason to buy these products unless they saved him money, and Mr M would have to live for 200 years to recoup the initial cost let alone make any profit.
- The CMC says that if Mr M had understood how little he would save, he would not have bought the products
- The notion that the sales advisor informed Mr M that he'd be paying huge sums for the products and would receive little to no benefit, but he still went ahead and

purchased the products is not plausible.

As the complaint couldn't be resolved by our investigator, I've been asked to make a decision.

Firstly, I'd like to explain that I understand Mr M hasn't been well, and I'm very sorry to hear that. I wish him well.

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 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 M paid for the battery and VO with a credit card, MBNA agrees that section 75 applies to this transaction. This means that Mr M could claim against MBNA, 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 M and the supplier, are deemed to have been conducted by the supplier as an agent of MBNA.

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, I do not uphold this complaint.

Neither MBNA nor Mr M have been able to provide much paperwork from the time of sale. Where there is such limited evidence, I have to make a decision based on the available evidence – that includes Mr M's testimony and any documentation either party have been able to submit as well as the wider circumstances.

Mr M (through his CMC) said, in his letter of claim, that he was led to believe that the battery and VO would pay for themselves in 8 years. This would be due to the savings made on his energy bills of 65%.

However, beyond this, Mr M has provided no detail as to what exactly he was told about the items or why he relied on that information. So, Mr M's testimony isn't very specific or detailed regarding what exactly he was told. For example, he doesn't specify whether the supplier broke down the specific amounts he would likely save having reviewed his bills, property and usage of electricity. There's no specific information about how such savings would be achieved and he hasn't provided any facts and figures mentioned during the sale – which would explain why he believed and relied on any such representations. He also hasn't been able to provide any documentation from the suppliers (such as an estimated returns document) breaking down the benefits he could expect to achieve based on his specific circumstances.

In order for me to uphold this case, I would need to be satisfied that the salesperson did more than make general comments about how well these products usually perform – or that they promoted them to him - that's the nature of selling items. I'd need to be satisfied that the

salesperson made specific misrepresentations about Mr M's items, and that he relied on these misrepresentations and bought them on that basis.

I've looked at the quote provided by Mr M and this doesn't include any of the statements that Mr M says were made by the supplier, it doesn't even include any general comments alluding to the products being self-funding or being able to achieve the levels of savings Mr M says he was advised the products were capable of achieving.

I have to bear in mind that Mr M has also purchased other energy saving products which he hasn't complained about – so he seems to have at least some interest in renewable energy.

I've then gone on to think about the wider circumstances of this case such as whether there is any general promotional material which suggests the supplier was promoting their products in a way that may support Mr M's testimony. And I haven't seen that in this case. Additionally, there doesn't seem to be any regulatory or other action taken against this supplier around the time Mr M bought his products that would indicate poor selling practices more generally. So, I have to bear in mind that there is no other evidence from the time of sale that the supplier was selling the products as being self-funding when Mr M bought his products.

I've considered the CMC's comments regarding this services approach to misrepresentation claims in other areas of energy saving products. But I would clarify to the CMC that each case is decided on the individual merits of that case and there have been many cases where we have found that there is insufficient evidence of the misrepresentations claimed by the consumer.

I've thought very carefully about Mr M's testimony, bearing in mind this is the main evidence Mr M has submitted. But having done so, I'm not satisfied that there is sufficient evidence here that the battery and VO were mis-represented to Mr M or that he relied on any such statements and bought them mainly for that reason. As explained above, each case is decided on the individual merits of that case, and on balance, I think that there isn't sufficient evidence that there was a misrepresentation that would enable me to uphold this complaint.

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 M to enter into the contract for the battery and VO, and I have found no other reason to uphold this complaint. So, I don't think MBNA's decision to not accept the claim was unfair.

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 M to accept or reject my decision before 6 November 2023.

Asma Begum
Ombudsman