

The complaint

Mr W complains that Omni Capital Retail Finance Limited rejected a claim he made under sections 75 and 140 of the Consumer Credit Act 1974.

What happened

In January 2019, Mr W agreed to purchase a solar panel system ("the system") from a supplier. He paid for this using a fixed sum loan agreement from Omni, which was repayable over ten years. In June 2019 Mr W paid off the loan.

In October 2022, a claims management company ("the CMC") made a claim to Omni on Mr W's behalf. This alleged that:

- Mr W was not left with anything in writing which showed the estimated benefits of the system – so he had to rely on what he was told verbally.
- He was told verbally that the benefits through income and savings would be enough for him to pay off the loan within five years.
- Because his electricity bills had not reduced and the income was not as much as expected, Mr W paid off the loan a few months after installation to avoid paying further interest.
- Mr W's relationship with Omni was unfair on him because:
 - The system was misrepresented to him.
 - He wasn't told of the need and the cost of replacing parts of the system within its expected lifetime or that the system performance would degrade over time.
 - Omni paid commission to the supplier which was not disclosed to Mr W.
 - Mr W was taken advantage of or pressured into the purchase.
 - He was not given an opportunity to read documents before signing them.
 - Mr W was not taken through a credit assessment before being offered the loan.

Omni rejected the claim. It said Mr W was given information on the costs (including the loan) and benefits of the system during the sales meeting before he agreed to the purchase. And this made it clear the system would not be self-funding in the way alleged.

Omni did not accept the other allegations made by the CMC. The supplier confirmed that the parts that the CMC said would need replacing were covered by long manufacturer

warranties, meaning that it was not expected they would need replacing, and if they did it would not cost Mr W anything. Omni confirmed that no commission was paid in relation to Mr W's loan. And that no complaint was received about the sale by Omni or the supplier until the claim was received.

Unhappy with this, Mr W made a complaint. Omni rejected this. So, Mr W asked the Financial Ombudsman Service to look at what had happened.

Our investigator did not think the complaint should be upheld. The CMC responded to query the investigator's reliance on the performance estimate document, which Mr W did not recall seeing (although he signed it) and Mrs W says did not include the estimated benefits when she signed it. Mrs W said the salesperson had indicated they would complete this later. The CMC said that Mr W was not left a copy of this document and only obtained it when the CMC submitted a subject access request prior to making the claim.

Since our investigator did not change his mind and has not resolved the complaint, I've been asked to make a decision.

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.

I've decided not to uphold this complaint.

Section 75 gives customers protection since it makes the creditor (in this case Omni) equally liable for any misrepresentation or breach of contract by a supplier of goods or services (in this case the supplier that sold the system to Mr W).

Section 140 allows the courts to find the relationship between a creditor and debtor is unfair on the debtor. In doing so the courts can consider the actions of a supplier (as agent of the creditor) when selling the goods or services purchased with credit, as well as the actions of the creditor.

I have considered all the available evidence, including Mr and Mrs W's recollection of the sale. But, taking all of this into account, I am not persuaded that their recollection is plausible and persuasive enough for me to conclude the alleged misrepresentation took place. And I've found no other reason to uphold this complaint.

The documents signed by Mr W, on 14 January 2019, included:

- Sales contract showing the purchase price and basic details of the system.
- Performance estimate showing the expected first-year benefit of the system was up to £453.94, including income and savings.
- A risk assessment.
- A validation sheet.
- The loan agreement.

Mr W does not recall seeing the performance estimate, but I can see that he signed it during the meeting. Mrs W says the estimated benefits had not been completed at the time she signed it. But I think it is unlikely that Mr and Mrs W would've signed this if it didn't have the estimated benefits on it. That was the whole point of the document and their signature confirmed that, "I acknowledge receipt of the above information and accept the above figures quoted are just an estimate and for illustrative purposes only".

So, I think it is likely that Mr W was given information during the meeting about the purchase price, and that the estimated benefits of the system would be up to £453.94 in the first year. Given the purchase price was £6,995.00 and the monthly loan repayment was £90.42, with a total amount payable under the loan agreement of £10,851.20, I think it is unlikely that Mr W would've been told the system would pay for itself (including loan interest) after just five years.

I do not think that Mr W not having a copy of the performance estimate when making the claim is significant. I don't know if he was left a copy and misplaced it or if he was not left a copy at the time of sale. I don't know if he was left a copy and misplaced it or if he was not left a copy at the time of sale. But it was clearly part of the sales process, given that he signed it at the time, and I think it is fair and reasonable to take into account what is shown on it.

I think Mr W's recollection is also undermined by the fact that he repaid the loan after just a few months but did not take further action in relation to how the sale was conducted until over three years later – not mentioning it to the supplier (which offered its own complaints procedure) nor to Omni. So, I am not persuaded the alleged misrepresentation took place.

I've thought about the other points the CMC has made, but I am not persuaded that these indicate there was an unfair relationship.

You would expect a system with a life expectancy of 25 years to require some maintenance and for its performance to degrade slightly over time. And the items that the CMC said would require replacement in that time appear to be covered by long term warranties – so would not be expected to fail and would be replaced free of charge if they did.

Omni has confirmed it paid commission to the supplier in relation to Mr W's loan agreement. So, there was no undisclosed commission that might create an unfair relationship.

I have seen nothing that makes me think that Mr W was taken advantage of or pressured into the purchase. His comments suggest his main issue with the sale was the alleged misrepresentation. And he seemed to know enough about solar panel systems to enquire about adding a battery to his system – so he was not completely lacking in knowledge about what he was buying.

Even if Mr W signed the sales documents without having much time to read them during the meeting, he did have the benefit of a 14-day cooling off period in which he could've reviewed these carefully and cancelled the loan and the purchase if he was unhappy. The installation didn't take place until around three weeks after he signed the documents. So, it was not as though he signed the documents, and the installation took place straight away before he could think about it further.

The CMC says Mr W was not taken through a credit assessment before being offered the loan. But I can see that Mr W submitted an application to Omni. It checked information held with Credit Reference Agencies and was satisfied that he could afford the loan. The data showed that Mr W had access to a large amount of credit through credit cards and overdrafts, but he was utilising less than 1% of this. So, it appears that appropriate checks were carried out and Omni had no reason to think it should not lend to Mr W. and Mr W has not suggested he should not have been lent the money. Indeed, he has confirmed he could've purchased the system using savings at the point of sale, and that he paid off the loan a few months later.

Overall, I'm not persuaded that the supplier misrepresented the system to Mr W or that his relationship with Omni was unfair on him. As such I don't think that Omni acted unfairly or unreasonably when it rejected Mr W's claim and complaint.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 January 2024.

Phillip Lai-Fang
Ombudsman