

The complaint

Mrs S complains that Omni Capital Retail Finance Limited (“Omni”) rejected her claim under Section 75 of the Consumer Credit Act 1974 in relation to a solar panel system (“the system”)

What happened

In October 2018, Mrs S agreed to purchase the system from a supplier. She paid for it in part using a fixed sum loan agreement with Omni.

In February 2022, a claims management company (“the CMC”) made a claim on Mrs S’s behalf under Section 75 of the Act. It said that Mrs S had been told the system would be self-funding in that the income and savings from it would cover the monthly loan repayments and that was a misrepresentation. The CMC said Mrs S wouldn’t have purchased the system if she’d known the system would not pay for itself in this way.

Omni rejected the claim. It did not accept that Mrs S had been told the system would be self-funding in this way. The CMC then referred a complaint about this to the Financial Ombudsman Service.

Our investigator looked into what happened and recommended the complaint be upheld. Omni disagreed. It felt the sales documents clearly showed the first-year benefits would be far less than the annual loan repayments. And given that Mrs S had taken so long to raise her concerns, it was unlikely that she was told the system would be self-funding on a monthly basis.

Because the complaint couldn’t be resolved, I’ve been asked to make a decision. I issued a provisional decision explaining that I was not planning to uphold this complaint.

Omni did not provide anything further for me to consider. The CMC responded on Mrs S’s behalf to say that:

- It takes a number of FIT statements and electricity bills to be received before you can assess whether or not money coming in covers costs going out. She had hoped that the system would improve its performance and sought to give the salesperson the benefit of the doubt before raising a complaint.
- The sales paperwork did not show benefits beyond the first year.
- Mrs S was attracted to the purchase because she was told the system was self-funding such that the benefits would cover the finance, and she relied on what she was told rather than what was on the sales contract.

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.

Section 75 of the Act says that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

I have the power to look at this complaint about whether Omni's response to a Section 75 claim was fair and reasonable. In doing so, I can take into account the representations of the supplier during the sale, because Section 56 of the Act says that any negotiations between Mrs S and the supplier are deemed to have been conducted by the supplier as an agent of the credit provider.

I have thought about the additional comments provided on behalf of Mrs S. But I am not persuaded to depart from what I said in my provisional decision. As such I am not upholding this complaint.

The CMC says Mrs S was told the system would be self-funding in that the income and savings generated by it would cover the monthly loan repayments. So, I've considered this alongside the sales documents and surrounding circumstances to decide if I think that is, on the balance of probability, what happened.

The monthly loan repayments were £97.60, which equates to £1,171.20 per year. Mrs S knew this because she signed the loan agreement. She also signed the sales contract, and later a contract variation form, which between them set out the first-year benefits of the system would be between £227.09 and £363.22 – much less than the first-year loan repayments.

It seems unlikely to me that the salesperson would've provided documents that show the benefits of the system in the first year were clearly much less than the loan repayments while simultaneously telling Mrs S that those same benefits would cover the monthly loan repayments.

While not pivotal in reaching my decision (in that I would likely have reached the same decision anyway), supporting this is the fact that it was over three years before Mrs S made any effort to query why the benefits were not covering the monthly loan repayments. I think that if that was her expectation at the point of sale it would quickly have become clear to her this was not happening and that something was wrong.

I appreciate that it can take up to a year's worth of FIT statements and electricity bills to get the full picture of how a solar panel system is performing. But the allegation made was that the system was misrepresented as being self-funding on a monthly basis from the start. So, I don't think it would even have taken that long for someone to realise what they had been told was very different to the reality. And even waiting a while to see if things improved and to give the salesperson the benefit of the doubt, I still don't think it is likely that a person would wait three years before taking action.

That Mrs S took no action for so long suggests to me that what happened in the intervening period is unlikely to have contradicted the expectations she had immediately following the sale, or what she was told during the sale.

The sales contract doesn't state what the estimated benefits of the system would be after the first year. But the allegation made is that Mrs S was told the system would be self-funding in that the income and savings would cover the monthly loan repayments. That would require the system to be self-funding in year one. And the sales contract makes it clear that would not be the case. So, this undermines the allegation, since it is unlikely that a salesperson

would make that claim while providing a document that clearly contradicts what they were saying.

Overall, I'm not persuaded that Mrs S was told the benefits of the system would cover the monthly loan repayments. As such, I don't think there was a misrepresentation on the part of the supplier. And it follows that Omni did not act unreasonably when it rejected Mrs S's Section 75 claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 1 January 2024.

Phillip Lai-Fang
Ombudsman