

The complaint

Mr H 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 H bought a solar panel system “the system” for his home in 2019. The purchase was funded by a loan from Omni, and that business is therefore liable for the misrepresentation and/or breach of contract of the supplier under the relevant legislation. In this case, Mr H alleges that the supplier misled Mr H into believing that the panels would be self-funding.

Mr H’s complaint was considered by one of our investigators. They thought that the documents from the time of sale (which Mr H 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 H says he was led to believe. So, the investigator did not think a misrepresentation had taken place.

Mr H disagreed. Through his representative he said:

- That the sale was conducted based on verbal representations and our investigator had given no consideration to this.
- The consumer wasn’t taken through the sales documents.
- The fact that the panels were performing isn’t relevant as the complaint is regarding the financial benefits received, and these do not cover the cost.
- Mr H also reiterated that he was unhappy he received one fewer panel than what the original sales was based on, that he didn’t feel any affordability checks had been carried out. He also felt pressured into buying the system, the facts and figures were confusing. He felt the verbal representation lured him into the purchase and, had he understood how little benefit he would receive, he wouldn’t have purchased the system.

As the complaint couldn’t be resolved by our investigator, I’ve been asked to make a decision. I understand Mr H’s representative is no longer acting for Mr H.

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, section 75 and section 140 of the Act. Section 140A is about unequal relationships between the parties to a credit agreement. In this case, the CMC relies on the alleged misrepresentation of the system.

Section 75 provides protection for consumers for goods or services bought using credit. As Mr H paid for the system with a fixed sum loan agreement, Omni agrees that section 75 applies to this transaction. This means that Mr H 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 H 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, I do not uphold this complaint.

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

Documents signed 13 February 2019

Contract for the sale of the system

The contract for the sale of the solar panels sets out the cost of the system. It says Mr H would be paying a deposit of £200 and the remaining amount £7,250 would be paid via finance.

The credit agreement

Mr H also signed the credit agreement on the same day. This shows he would be taking out a 10-year loan to fund the purchase of the system. It sets out that the panel costs £7,450, that Mr H was paying a deposit of £200, that the amount of credit borrowed was £7,250, and the total amount payable was £11,446.78. Mr H's monthly payment was £93.72.

So I think the costs were made clear to Mr H during the sale.

Estimated returns page

Mr H was also given a document setting out the estimated returns he could expect from the system. This shows that his year one benefit would be between £180.69 and £248.69. His Feed in Tariff (FIT) income annually would be £113.19, and the system would generate approximately 1766 kWh.

So, to me it looks like the supplier made it clear what the system cost as well as the benefit the system would likely produce. I think it's clear that to repay a loan for £7,250 over 10 years, Mr H would need at least £725.00 per year to meet the repayments under the loan – and the maximum annual benefit of £248 falls significantly short of that. I also think it's apparent that 12 payments of £93.72 is significantly more than £248. The estimated benefit covers just over two monthly payments – so I think it was very clear that the system wouldn't be self-funding. Mr H has signed these documents and also appears to accept these documents were given to him during the sale.

Mr H says he recognised at the time the documents indicated the system wouldn't be self-funding and he tried to cancel but the sales representative convinced him the above figures were "worst case scenario" and he was persuaded to push ahead with the installation.

But I don't find that persuasive – I think the shortfall is so significant, and the costs substantial that I'm not satisfied the supplier could have asserted with any credibility that the system would nevertheless be self-funding without an explanation as to how that shortfall would be made up. Even if the supplier did assert that the figures were worst case scenario

– that means Mr H knew it was possible the system would perform to this degree and went ahead with the purchase anyway.

So, I'm not satisfied that there's sufficient evidence here that the system was sold to him on the basis that it would be self-funding nor that Mr H relied on any such representations and bought the system mainly for that reason.

Document signed 17 February 2019

I understand on 17 February 2019, Mr H was informed that the supplier couldn't install 8 panels on his roof as originally agreed, but only 7. Mr H was given an updated estimated returns document based only on the 7 panels. This showed Mr H's system would produce around 1,646 kWh in energy annually, and his first-year benefit would be between £168.48 and £231.42. His FIT payments would be around £105.54.

Mr H has now raised that while the system was expected to produce less energy, the costs were unamended despite this. However, Mr H signed the new estimated returns document, was still within his cancellation period and was aware the costs hadn't changed. I can also see the difference in performance is marginal. The system performance was still broadly in line with the original agreement – and he agreed to go ahead with the installation despite the updated figures being given to him and being aware the costs hadn't changed. Mr H also signed a satisfaction note after installation.

I would add that I've looked at how the system has performed since installation. Mr H's representative says that he has received on average around £112.08 per year in FIT payments (this is 12 payments of £9.34 as set out in Mr H's letter of claim). This is more than the FIT estimate based on 7 panels and only £1 less than the 8-panel FIT estimate. Additionally, as set out in our investigators view, the average power generated is 1,705kWh – which is significantly more than the 7 panel estimate and only slightly less than the 8-panel estimate (and certainly within a reasonable variance that is generally acceptable for these types of cases).

So overall, while I can see Mr H had one fewer panel installed than originally agreed, Mr H was made aware of this at the time, and he agreed to go ahead with the sale being fully informed of the variation. The system has also broadly performed in line with the original estimate in any event. So, I don't think Omni needs to do anything about this now.

Overall, I think it's more likely that it would have been clear to Mr H that the solar panels would not be self-funding in the way he says he was told they would be based on both 7 and 8 panel system estimates. While I've carefully considered Mr H'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 or that there was reliance on any such misrepresentations that would enable me to uphold this complaint.

Other issues

I understand Mr H also raised concerns that Omni may not have done sufficient credit checks before granting him the loan. As explained by our investigator, Omni said it did appropriate affordability checks. This showed Mr H had no missed payments on his credit history, and he wasn't over any of his credit limits. And it also seems like Mr H maintained his monthly payments after the sale. So, I don't think there's any evidence the loan wasn't affordable.

I've also thought about Mr H's concerns that he was pressured to buy the system. But pressure can be subjective, and while I have no doubt that the supplier encouraged him to buy the system (that's the nature of selling items), I haven't heard enough detail to persuade me that undue pressure was applied, especially since Mr H seems to accept, he was aware of the cancellation period.

I've also gone on to consider whether a court may conclude that there existed an unfair relationship under section 140A the Act. A sufficient inequality of knowledge and understanding is considered a classic source of unfairness in a relationship between a creditor and a consumer. Omni has confirmed that it paid no commission to the supplier and, considering that I haven't found any misrepresentation, I think a court is unlikely to conclude that there is an unfair relationship under section 140.

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 H 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 his 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 Mr H to accept or reject my decision before 22 December 2023.

Asma Begum
Ombudsman