

## **The complaint**

Mr P 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 P 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 P alleges that the supplier misled Mr P into believing that the panels would be self-funding.

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

Mr P 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.
- An email account was set up during the sale so Mr P could receive information regarding the sale, but Mr P was not computer literate.

As the complaint couldn’t be resolved by our investigator, 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.

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 P paid for the system with a fixed sum loan agreement, Omni agrees that section 75 applies to this transaction. This means that Mr P 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 P 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 the same reasons as those explained by the investigator, I do not uphold this complaint.

I understand Mr P's representatives have highlighted concerns over Mr P not being computer literate and over his email address only being set up on the day of the sale so he could receive information regarding the sale. However, as explained by the investigator, it looks like the email address was used by Mr P to receive the information and he signed the consumer credit agreement electronically. Additionally, some the sales documents I've specifically referred to below were completed and signed by hand on the day of the sale. So overall, I'm satisfied that Mr P was provided with the sales documents, and that he would've seen these at the time of sale.

The contract for the sale of the solar panels sets out the cost of the system, as well as referring to the finance that Mr P took to complete the purchase of the system.

**PAYMENT SCHEDULE**

Contract Cost (excl. VAT):	£ 9,214.28
VAT @ 5% / 20%:	£ 460.72
Total Cost:	£ 9,675.00
Deposit:	£ 4,837.50
<b>TOTAL DUE</b> (due on completion of installation):	£ 4,837.50

Cash ☐ Faster Payment ☐ VAT No. 100841220  
OMNI 120

**PAYMENT DUE ON COMPLETION OF INSTALLATION**

This section was completed by hand and Mr P signed this again by hand on the day of the sale. It sets out the cost of the system (£9,675), that Mr P was paying a deposit of £4,837.50, that £4,837.50 was still due on completion. It also refers to the 120-month (i.e. 10-year) loan, via Omni.

I understand Mr P says that he wanted to pay by cash but was pressured to take out the finance. However, there is an option to pay by cash in the contract he signed, so I think its likely he would have been aware he could pay by cash.

On the same day, Mr P also electronically signed the credit agreement which repeated the above information and also set out the total amount repayable (£12,341.82), as well as his monthly payment of £62.53. Overall, I think it was made clear how much the system cost, and that Mr P was aware of and agreed to take finance. I'm also satisfied that he was aware that his loan term was 10 years, what his monthly and overall cost would have been.

Mr P also signed an estimated returns document which provided him with a detailed breakdown of the likely benefit he would receive from the system. This shows that the total estimated year one benefit was £148.74.

#### Estimated Year 1 Benefit

Elec Savings 2911 KW/h x 30 % x 17.032 p/KWh = £ 148.74 to —  
Total Estimate Year 1 Benefit = £ 148.74 to —

I understand Omni says the supplier also sent Mr P a quotation document following the sale via email. This also sets out the benefit the system can provide over the 30-year lifetime of the system, and I note the year one benefit is higher at £373.75. Mr P, as explained above, says he wasn't computer literate and doesn't recall seeing these figures.

However, the estimated returns document mentioned above is signed by him immediately below the estimated year one benefit, so I think at the very least he would have seen this figure. And Mr P also told us that the supplier was at his property for several hours and he was shown graphs and diagrams showing what benefit he would receive. So, I think it's more likely that he did discuss the likely benefits he would receive, and, at the very least, the estimated returns document is reliable evidence of the facts and figures he was given at the time of sale.

I think it's clear that 12 payments of £62.53 is significantly more than £148.74. Additionally, to repay a loan for £4,837.50 over 10 years, I think it's apparent (without the need to do any calculations) that Mr P would need around £483.75 per year to meet the annual payments on the loan (and this is without even including any interest or charges). And both estimated benefit figures are significantly less than this.

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 P had been told something different, on being asked to sign the estimated returns document, 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 P's understanding, at that time.

While I've carefully considered Mr P'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.

I understand Mr P also raised concerns that Omni may not have done sufficient credit checks or checked his financial outgoings before granting him the loan. As explained by Omni, it said it recorded Mr P's employment and income details and ran a credit check. It also seems like Mr P maintained his monthly payments before paying off the loan early. So, I don't think there's any evidence the loan wasn't affordable.

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 P 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 P to accept or reject my decision before 22 November 2023.

Asma Begum  
**Ombudsman**