DRN-4520191

The complaint

Mr S complains about Oplo PL Ltd ("Oplo")'s response to a claim he made under Section 75 of the Consumer Credit Act 1974, relating to a solar panel and battery storage system ("the system") he purchased from a supplier in 2018.

What happened

Mr S purchased the system using a fixed sum loan agreement. The system was installed in June 2018.

At the time of purchase and when Mr S made his initial complaint, his loan was provided by and was the responsibility of another financial business (not Oplo). I will refer to that other financial business as "the original lender". Since then, Oplo has become responsible for the loan account and as such has responsibility for this complaint.

Mr S initially contacted the original lender in August 2019. He complained that there were problems with the installation, including poor workmanship when it was installed, which meant the system was not working properly.

The original lender issued a number of responses to Mr S which he did not receive until he chased the matter up some time later. Unhappy with how things had been handled, Mr S contacted the Financial Ombudsman Service to ask for help in resolving the complaint.

After this, Oplo took over responsibility for the loan account and complaint. Oplo accepted that the original lender had not handled things well, nor had it resolved the matter in a fair and reasonable way.

Oplo arranged for an inspection of the system to confirm its condition and inform what was needed to put things right. The inspection confirmed the system had not been installed to an acceptable standard. It recommended the system be completely removed, then either:

A. The roof be reinstated to how it would've been before the system was installed.

Or

B. The damage to the roof be repaired and the system reinstalled to the appropriate standards using new fitting kits and wiring.

As a result of this, Oplo made an offer to:

- Complete the remedial works as detailed in the report (under option B above) so that Mr S will have the system he agreed to purchase (which appeared to be his preference at that time).

- Refund £3,514.58 of Mr S's loan repayments (he's paid off the loan in full), which would mean he only paid the basic or cash price of the system (£17,500.00) and was not charged any interest.

- Pay compensation of £2,000.00 for the distress and inconvenience caused.

Mr S rejected this offer. He was unhappy that as part of this Oplo had said the remedial work would only come with a five-year warranty, since he said the original installation had a ten-year warranty. And he felt that if the system had been working properly he wouldn't have incurred such large electricity bills – so he wanted additional compensation for the extra expense incurred.

Since Mr S rejected Oplo's offer, Oplo asked for an ombudsman to decide how it should put things right. And the complaint was passed to me so I could make a decision on this.

I issued a provisional decision explaining how I felt things should be put right – which included three options that Mr S could choose from:

- Option A – for if Mr S wants the system repairing and will allow Oplo to arrange the work.

- Option B – for if Mr S no longer wants the system and will allow Oplo to arrange its removal.

- Option C – for if Mr S didn't want Oplo to arrange any work on his property.

Oplo responded to say that it agreed to the proposals set out in my provisional decision.

Mr S responded to say that he would prefer Option C and made some comments about why he did not register for the Feed-In Tariff scheme.

Because neither Oplo nor Mr S disagreed with my provisional decision, my final decision is along the same lines.

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 have the power to look at complaints against financial businesses about how they have responded to claims under Section 75 of the Consumer Credit Act 1974 ("the Act"). Section 75 says that debtors can claim against creditors in the same way they could claim against a supplier of goods or services where there was a misrepresentation or breach of contract on the part of the supplier.

I have decided to uphold this complaint. Below, I briefly explain my reasons and set out what Oplo must do to put things right.

Breach of contract

In this case Mr S's claim is that there was a breach of contract on the part of the supplier – because the system it supplied was not installed with reasonable care and skill, such that it was not installed to the appropriate standards and did not work properly.

Oplo has accepted there was a breach of contract by the supplier. Everyone in this case is agreed on this point. So, all that is left for me to decide is what Oplo should do to put things right.

Remedy for breach of contract

Where there is a breach of contract, there are usually two options for putting things right:

- Ensure the contract is fulfilled – in this case the system being properly installed in full working order.

- Cancel the contract and put the customer back in the position he would've been in if he had never agreed to the purchase (or as close as is reasonably possible).

In this case both options would normally require work to be done on Mr S's property – either to reinstate or reinstall the system or to remove it. But this can cause additional problems – for example if there are additional disputes about the work required.

So, in my provisional decision I included an option in case Mr S did not want Oplo to arrange any work at his property (or in case he did not allow this to happen within a reasonable time).

That option involved Oplo paying financial compensation in order to put Mr S back in the position he would've been in if he had never agreed to the purchase (so far as is reasonably possible), plus paying additional compensation to recognise the distress and inconvenience caused and removing the loan from Credit Reference Agency data.

That is the option that Mr S has chosen. It means the settlement is purely financial and Oplo does not need to arrange any work at Mr S's property. Once the settlement is paid, Oplo will have no further liability in relation to the system (because Mr S will have been paid compensation in order for him to have the system removed and his property reinstated). It is up to Mr S how he actually uses the settlement.

In my provisional decision I warned Mr S that this option did involve some risk on his part, in that the amount paid to him for removal of the system was fixed as per the report. And that potentially this amount may not prove to be sufficient for Mr S to have the system removed and his property reinstated.

Since Mr C has chosen this option and Oplo has accepted my provisional decision, this is how I have decided that Oplo should put things right. I set this out below.

Putting things right

To put things right, Oplo should unwind the credit agreement and:

- Pay Mr S £7,800.00 plus VAT (the cost, according to the report, of removing the system from Mr S's property and reinstating any damage caused by its installation and removal).

- Refund Mr S all the loan repayments he has made.

- Remove the loan from Credit Reference Agency data.

- Pay Mr S £2,000 compensation in recognition of the distress and inconvenience caused.

My final decision

For the reasons I've explained, I uphold this complaint. Oplo PL Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or

reject my decision before 15 January 2024.

Phillip Lai-Fang
Ombudsman