

## **The complaint**

Mr W 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 W bought a solar panel system (“the system”) for his home in 2018. The purchase was funded by a loan from Omni, and that business is therefore liable for the misrepresentations and/or breach of contract of the supplier under the relevant legislation. In this case, Mr W alleges that the supplier misled Mr W into believing that the panels would be self-funding.

Mr W’s complaint was considered by one of our investigators. She thought the complaint should be upheld because she didn’t think the documents from the time of sale were clear enough to demonstrate that it had been made clear that the system wouldn’t be self-funding. Instead, she felt it was fair for Mr W to rely on what he was being told verbally which was that the system would be self-funding. She felt Omni should therefore put things right by restructuring Mr W’s loan and only charging him the benefits he would likely receive over the term of the loan.

Omni disagreed for the following reasons:

- It said the estimated benefits were clearly set out as were the costs which would have made it clear the system wasn’t self-funding.
- Mr W didn’t raise any concerns about the benefits he was receiving for many years and only did so after his representative raised such concerns.

As the complaint couldn’t be resolved by our investigator, it was passed to me.

In my provisional decision of 17 November 2023, I set out why I was minded to not upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Omni appeared to accept my findings and made no comments. Mr W replied reiterating that he thought the loan costs would be covered by the benefits of the system which included a combination of the payments received for the energy generated from the system and savings made on his energy bills.

## **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 my provisional decision I explained the following:

*In this case the relevant law includes section 56, section 75 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.*

*As Mr W paid for the system with a fixed sum loan agreement, Omni agrees that section 75 applies to this transaction. This means that Mr W 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 W 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, currently, I do not uphold this complaint.

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

The estimated returns document is only one page long and sets out the benefits that can be expected from the system. It was signed by Mr W on 3 October 2018, so I think he would've seen this figure. The document sets out that Mr W's total annual estimated benefit is £255.40.

Total Estimated Year One Benefit = £ 255.40

Mr W also signed a validation document on the same day. This set out his expected loan costs.

#### LOAN DETAILS

Loan Amount	£ 5000
Loan Term	120 months
Monthly Payments (paid by customer)	£ 71.10
Total Repayable (Inc. Interest)	£ 8,032.04

This shows Mr W's loan was for 120 months (i.e. 10 years), and his monthly payments were £71.10. Neither one of these documents are particularly long, and the facts and figures were not hidden away in small print.

Normally the sales paperwork reflects the discussions consumers had with the sales advisor, so it looks like the sales advisor discussed both Mr W's costs and estimated benefit with him. I think its apparent (without doing any calculations) that to repay a loan for £5,000 over 10 years, Mr W would need at least £500 per year to cover the cost of just the credit element of the loan. And his first year benefit of £255 falls significantly short of that without even considering the interest on the loan.

As explained above, the validation sheet also showed his monthly payments were around £71. I think its apparent 12 payments of £71 is significantly more than the annual benefit of approximately £255. So, I think it's clear that the system benefits wouldn't be sufficient to cover the cost of the loan.

As mentioned above, none of these figures are hidden away in small print, but are, in my view clearly visible. And Mr W has signed each one of these documents – so, I think he

would've, at the very least, seen them when he signed the documents. If Mr W had been told something different, on being asked to sign these documents, 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 documents most likely did not contradict Mr W's understanding, at that time. And the documents show the system isn't self-funding. I also think it's unlikely that the supplier would ask Mr W to sign these documents which show such a considerable shortfall and at the same time verbally give him figures to the contrary – or assure him the system would be self-funding without any explanation as to how that shortfall would be made up.

Omni says Mr W also signed the credit agreement the same day – which showed the total amount payable including finance charges was £7,756.40. His credit agreement also shows his monthly payment was only £65.43 (rather than the £71 in the validation sheet). From my experience of these cases, the difference in cost is usually if the finance provider uses a different interest rate than the supplier expected. But again, I think it's clear that to repay £7,756.40 over 10 years, Mr W would need £775.64 annually to meet the loan repayment – which is over three times the annual benefit. And despite there being several weeks between Mr W signing the credit agreement and installation, I've seen no evidence that Mr W tried to cancel or raise any concerns at the time.

I understand the discrepancy in figures might have been confusing for Mr W – but that is only in relation to the monthly repayment figure and total amounts payable. The estimated returns document is very clear and was signed by Mr W. And this figure is so small in comparison to the monthly and total payable in both the validation sheet and credit agreement (both documents Mr W signed), that I think it's apparent there would be a substantial shortfall between the benefit and cost.

Overall, I think 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. And I don't think it's likely that he was led to believe the system would be self-funding, when the documents he signed, clearly display such a significant shortfall between the cost and the benefit.

While I've carefully considered Mr W'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.

Mr W's representative says that Omni didn't appear to do appropriate credit checks. But Omni says it carried out sufficient checks to assess his creditworthiness and looked for adverse information on his credit history for example. Omni says Mr W also declared his annual income and signed a declaration confirming that the information given was true. I haven't seen any evidence that the loan wasn't affordable when it was granted to him. So, while I've thought carefully about this, I don't uphold his complaint for this reason.

### 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 W 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 declining this claim was unfair.

Mr W has reiterated that he was led to believe that the combined benefits, including savings on energy bills and income from the energy produced by the panels would cover the cost of the loan repayments. However, the total estimated benefit of £255 – included both the estimated income he would receive for the energy produced (of just over £131) and estimated savings on Mr W's energy bills (of just over £123). This is clearly shown on the

estimated returns document mentioned above. So as explained in my provisional decision, the total estimated benefit was still only around £255 including both types of benefits and falls far short of what would be needed to maintain the annual loan payments.

So, while I've again thought about this complaint in its entirety, I am still not satisfied that there's sufficient evidence the system was sold to Mr W on the basis it was self-funding. Overall, I'm still satisfied that there were no untrue statements of fact made by the supplier that induced Mr W 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 declining this claim was unfair.

### **My final decision**

For the reasons explained, I don't 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 4 January 2024.

Asma Begum  
**Ombudsman**