

The complaint

Mr N has complained that Omni Capital Retail Finance Limited (“Omni”) rejected his claim against it under the Consumer Credit Act 1974.

What happened

Mr N 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 misrepresentations and/or breach of contract of the supplier under the relevant legislation. In this case, Mr N alleges that the supplier misled Mr N into believing that the panels would be self-funding.

Mr N’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 made it clear what period of time the estimated benefits covered – therefore it wasn’t clear that the system wouldn’t be self-funding from the documents. Instead, she felt it was fair for Mr N to rely on what he was being told verbally. She felt Omni should therefore put things right by restructuring Mr N’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 are clearly set out as annual benefit amounts and would have made it clear the system wasn’t self-funding
- That Mr N appears to accept that he recognised at the time that the documents he was left with suggest the system wouldn’t be self-funding, but he did nothing with that information at the time – instead going ahead with the sale.
- Mr N 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, I was asked to make a decision

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. Mr N (nor his representative) made any additional comments. Omni appeared to agree with my provisional findings and did not add any further comments.

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 and section 140 of the Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr N paid for the system with a fixed sum loan agreement, Omni agrees that section 75 applies to this transaction. This means that Mr N 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 N and the supplier, are deemed to have been conducted by the supplier as an agent of Omni. And section 140A is about unequal relationships between the parties to a credit agreement.

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 N 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 contract for the sale of the solar panels sets out the cash price of the solar panel system as well as the total estimated year 1 benefit provided by the solar panel system.

→ £ 673.06	Your estimated total annual benefit accumulated from the combined values of your FIT, export tariff and electricity saving.
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I think its clear that Mr N's total annual estimated benefit is £673.06 – Mr N signed this part of the contract on 1 February 2019.

Total Order Price (INC. VAT)	£ 10,097
Deposit (INC. VAT)	£ 3,097
Final Payment on Completion of Installation (INC. VAT)	£ 7000
Method of Payment	Cash / Finance

The second part of the contract set out the cash price of the system, which was £10,097, that Mr N would be paying a deposit of £3,097 and that the remaining amount of £7,000 would be paid by finance. The second part of the contract was also signed by Mr N on 1 February 2019. The overall contract was not particularly long, and the facts and figures were not hidden away in small print.

Mr N also signed a validation sheet on the same day – 1 February 2019.

LOAN DETAILS	
Loan Amount	£ 7000
Loan Term	120 months
Monthly Payments (paid by customer)	£ 90.65

This shows Mr N's loan was for 120 months (i.e. 10 years), and his monthly payments were £90.65.

Normally the sales paperwork reflects the discussions consumers had with the sales advisor, so it looks like the sales advisor discussed both Mr N's costs and estimated benefit with him. I think its apparent (without doing any calculations) that to repay a loan for £7,000 over 10 years, Mr N would need at least £700 per year to cover the cost of just the credit element of

the loan. And his annual benefit of £673 falls short of that without even considering the interest on the loan.

As explained above, the validation sheet also showed his monthly payments were around £90. I think its apparent 12 payments of £90 is significantly more than the annual benefit of approximately £673. So, I think it's clear that the system benefits wouldn't be sufficient to cover the cost of the loan.

Mr N's letter of claim also suggests he was aware the documents didn't indicate the system was self-funding, but there were several weeks between the sale and installation. So, if Mr N felt the system had been sold on the basis that it would be self-funding, then I'm not sure why he didn't raise this with the supplier (or Omni) and cancel the sale before installation. It also appears he didn't raise this for a number of years after the sale.

As explained above, none of these figures are hidden away in small print, but are, in my view clearly visible. And Mr N 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 N had been told something different, on being asked to sign these documents, or checking them following the sale, 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 either the documents most likely did not contradict Mr N's understanding at that time, or he wasn't relying on the system being self-funding when he bought it and went ahead with the purchase in any event. The documents show the system isn't self-funding.

Mr N signed the credit agreement the following day – which showed the total amount payable including finance charges was £13,955.96. His credit agreement also shows his monthly payment was £90.65 for the first month and £90.49 for the remaining term of the loan. Again, I think it's clear that to repay £13,955.96 over 10 years, Mr N would need at least £1,395 annually to meet the loan repayment – which is over twice the annual benefit. And despite there being several weeks between Mr N signing the credit agreement and installation, I've seen no evidence that he tried to cancel or raise any concerns at the time.

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 N'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'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. I haven't seen any evidence that Omni paid any 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.

Other issues

Mr N's representative says that Omni didn't appear to do appropriate credit checks, didn't ask for Mr N's employment status or his financial income and outgoings. But Omni says it carried out sufficient checks to assess his creditworthiness and for adverse information – but Mr N passed its credit checks. Mr N also declared his annual income and signed a document

confirming that the information given was true. It also looks like Mr N maintained the payments following the sale. So, I haven't seen any evidence that the loan wasn't affordable when it was granted to him.

Mr N also says that the sales advisor pressured him to agree to the sale by telling him the government Feed in Tariff scheme was ending. However, it looks like there were several weeks between Mr N agreeing to the purchase and the installation of the system. Mr N also had a cooling off period. If Mr N didn't want the system, I would have expected him to have cancelled within that period – and I've seen no evidence that he tried to cancel. Pressure can also be subjective, and Mr N hasn't provided much detail as to what was said or done to pressure him specifically. So, I don't uphold his complaint on this basis.

So, while I've thought carefully about these concerns, I don't uphold his complaint for these reasons.

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 N 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.

Neither party have provided any additional submissions, so in the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision (and as set out above). With this in mind, I don't uphold this complaint.

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 N to accept or reject my decision before 4 January 2024.

Asma Begum
Ombudsman