

The complaint

Mr D complains that Omni Capital Retail Finance Limited rejected a claim he made under sections 75 and 140 of the Consumer Credit Act 1974.

What happened

In 2019 Mr D purchased a solar panel and battery system ("the system") from a supplier. He paid for it using a fixed sum loan agreement from Omni.

In 2022, a claims management company ("the CMC") made a claim to Omni saying that the system had been misrepresented to him as self-funding within five years, that there was a breach of contract because the monitoring service wasn't set up, and that his relationship with Omni was unfair on him.

Omni rejected the claim, so Mr D made a complaint including to the Financial Ombudsman Service. Our investigator partly upheld the claim. She did not think there had been a misrepresentation or that Mr D's relationship with Omni was unfair on him. But she said there was a breach of contract regarding the monitoring service, and if Mr D incurred a cost to set this up that Omni should refund him for this.

Mr D did not accept this – maintaining that there was a misrepresentation, and that the contract did not clearly compare the costs and benefits. The CMC pointed to another complaint dealt with by the Financial Ombudsman Service, which it felt was similar and it said was upheld. As such, I've been asked to make a decision. Omni did not provide 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.

I've reached the same outcome as our investigator, for the same reasons. This means I'm upholding the complaint only in relation to the monitoring service not being provided.

The Financial Ombudsman Service considers complaints on their individual merits. In the other complaint that the CMC has pointed to, the financial business made an offer of settlement during the course of the investigation, which was accepted by the consumer. Had that not been the case and the complaint was decided by an ombudsman, the outcome may have been different. In any case, the Financial Ombudsman Service resolves complaints on their individual merits. This means that seemingly similar complaints may have different outcomes for any number of reasons.

Misrepresentation

The contract, although in four parts, is one document. It was provided to Mr D at the time of sale, and he signed it. I think it is likely that the discussion in the sales meeting was based

on what is in the documents – not least as they were handwritten, presumably during the meeting.

The contract includes the following information:

- The purchase price of the system.
- The monthly loan repayment.
- The total payable under the loan agreement.
- The estimated annual income.
- The estimated annual savings.
- The combined total estimated annual benefit (income and savings combined).

Looking at this information, the total estimated annual benefit is shown to be £765.66. The monthly repayments are shown as £177.07. I think it is clear that the estimated annual benefit is less than the annual loan repayments, which equate to £2,124.84.

Given the level of estimated benefit I think it is unlikely that the supplier would've said the system would pay for itself within five years.

I have taken into account Mr D's recollection of what he was told, including that these figures were described as the bare minimum he would receive. But, when considering all the available evidence, I do not think that his recollection is sufficiently plausible and persuasive for me to conclude that there was a misrepresentation. So, I do not uphold this part of the complaint.

Unfair relationship

I have not seen anything that persuades me that a court would conclude that Mr D's relationship with Omni was unfair on him. Omni paid no commission in relation to the loan agreement, it carried out appropriate checks before providing the credit to Mr D, and it provided Mr D with the necessary information about the loan agreement. So, I am not upholding this part of the complaint.

Breach of contract

In terms of the monitoring service, this is mentioned in the contract, and it appears the supplier did not register Mr D's system with the monitoring service provider. This appears to be a breach of contract, for which the usual remedy is to fulfilment of the contract. In this case that means the system being registered so Mr D can benefit from the monitoring service.

I understand that Mr D will need to engage a solar panel company to inspect his system and register it with the monitoring service provider – and that it is possible that a solar panel company may charge him a fee for this. If that happens then I think Omni should reimburse Mr D the cost of registering his system for the monitoring service.

Putting things right

If Mr D incurs a fee when having his system registered for the monitoring service, Mr D should provide Omni with evidence of the fee he has paid, and Omni should reimburse him.

My final decision

For the reasons I've explained, I uphold this complaint in respect of breach of contract only. Omni Capital Retail Finance Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 January 2024.

Phillip Lai-Fang
Ombudsman