

The complaint

Mr T is unhappy with the response of Omni Capital Retail Finance (OCRF), following a claim against it under section 75 of the Consumer Credit Act 1974 ("the CCA").

What happened

In or around July 2018 Mr T was contacted by a representative of a company I'll call "S" to discuss purchasing a solar panel system to be installed at his home. After being visited by a representative from S at his home, Mr T decided to purchase the solar panel system with a 5-year fixed sum loan agreement from OCRF. The solar panels were subsequently installed at his home. Mr T says that S told him that the benefits he would receive from the panels would be sufficient to cover the cost of his panels in 5 to 7 years, resulting in his system being "self-funded". Mr T has said that this has not turned out to be the case.

In November 2019, Mr T, via his representative, made a claim under section 75 of the CCA to OCRF. Mr T said what S had told him about the about his solar panels being self-funding was a misrepresentation, and it was this misrepresentation that had induced him to enter the contract. When making the section 75 claim Mr T provided a number of documents including his loan agreement, his contract with S, a contract variation form, an illustration of potential returns, his MCS certificate. The representative also said that Mr T's loan had been unaffordable and no cooling off period given.

In its response letter OCRF said as it was not present at the sale, it could not comment on what was said, but that from the evidence it had, Mr T's panels were performing in line with the estimates. The information given by Mr T satisfied their underwriting criteria for the loan, and there was no record that Mr T tried to cancel within the cooling off period. They also confirmed no commission was paid in respect of the loan.

As Mr T was unhappy with this response, he made a complaint, and OCRF had 8 weeks to investigate.

As the matter wasn't resolved in that 8 weeks, one of our investigators looked into it, she concluded that Mr T's testimony was convincing, and that the benefits of the panels had been mis-represented to him and caused him to enter into a contract he otherwise would not have done. She recommended that OCRF carry out a calculation to establish what the likely benefits would be for the panels over the 5-year loan period and reduce Mr T's loan accordingly. She also recommended OCRF pay Mr T £100 for trouble and upset. She considered this to be a fair outcome to the complaint made.

OCRF did not agree with the investigator's assessment. In summary it argued:

- Mr T had only contacted OCRF once, in August 2020 to discuss settling his loan. If he was unhappy OCRF would have expected this to have been mentioned
- It's not fair to accept Mr T's statement about what was told at the point of sale without some form of substantiation.

- It is wrong to reach the conclusion that the only reason to make a purchase is to reduce outgoings, and it's not possible to establish Mr T's motivation to buy the panels.
- The document "estimated year one benefits" makes it clear that benefits are less than the cost of the finance.
- There is no requirement for the loan agreement to include details of the cost and benefits of the solar panels.
- They disagree that Mr T would not have realized from the paperwork that the panels were not self-funding, and Mr T is expected to make his own decision about the purchase, and how best to pay.

As an agreement couldn't be reached, the complaint has been passed to me to consider.

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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I would consider to have been good industry practice at the relevant time.

In this case the relevant law includes section 56 and section 75 of the CCA. Section 75 provides protection for consumers for goods or services bought using credit. It states:

"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in the respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor".

As Mr T paid for the solar panel system with a fixed sum loan, OCRF agrees that section 75 applies to this transaction. This means that Mr T can claim against OCRF – the creditor – for any misrepresentation or breach of contract in the same way he could have claimed against S, 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 T and S, as the supplier, are deemed to have been conducted by S as an agent of OCRF.

What happened?

If there is a dispute about what happened, I must decide on the balance of probabilities – that is, what I consider to have been most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

Mr T says he was contacted by S and during a subsequent sales meeting told that the solar panel system would be entirely self-financing. I haven't seen anything to suggest that Mr T had previously shown an interest in solar panels before he was contacted by S.

I've considered Mr. T's testimony about what happened when he spoke to S. I find his testimony to be credible and persuasive.

It's also hard to see why Mr T would agree to the installation of the solar panel system, paid for by a loan, which would increase his monthly outgoings. OCRF have said it's not reasonable to conclude that a desire to reduce outgoings is the only reason to make a purchase. Whilst that may be true in many cases where the item purchased itself has a value to the purchaser, I think with solar panels the situation is different. The benefit of panels is cheaper energy, created by personal consumption and the benefits of the Feed In Tariff. I'm not persuaded that Mr T had any incentive to purchase the panels for any reason other than the potential savings. So, it follows that I do think it's more likely that not that Mr T's motivation for buying the panels, was to reduce his outgoings.

I also note that when Mr T contacted OCRF to talk about settling his loan he had in fact already made a claim under Section 75. So, I don't think it's reasonable to expect Mr T to have raised concerns at any other point, or to doubt his testimony for this reason.

Based on this, I think it is unlikely that he would've agreed to the solar panel system and a loan with OCRF, unless he'd been led to believe that it would be self-funding and come at no additional cost to him. Therefore, I accept Mr T's version of events.

The documentation

I've gone on to consider the paperwork that has been provided to see if there was anything contained within it that made it clear that the solar panel system wouldn't be self-funding.

Firstly, I'll consider the loan agreement. This sets out the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly loan repayments. I'm satisfied that this is clear and there is no reference to the solar panel system being self-funding.

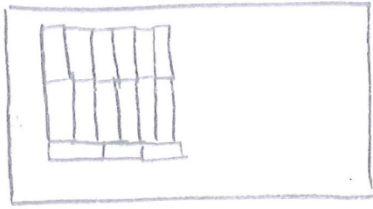
To be clear, like the investigator, I accept OCRF's assertion that there is no requirement for the loan agreement to set out the details of the solar panels. What I am considering is whether or not all the documentation Mr T had access to at the time would have made it evident that, despite what he says he was told, the solar panels would not be self-funding. In order for Mr T to make an informed decision about the benefits of the panels in relation to the overall costs to him he needed to be able to compare the cost of the solar panel system to any benefit he may have received or have been promised.

I'll now turn to the contract between Mr T and S. It shows the cost of the system with VAT, without VAT, the amount of the deposit, and how much is outstanding with the deposit. Crucially, in my opinion, it doesn't include the cost of the finance. Therefore, the £9,999.00 cost isn't the actual cost of the system to Mr T. The true cost to him, including interest was £12,567.26. In my view a significant difference.

Mr T has two further documents. One with the panels arranged in portrait and landscape position dated 9 July 2018, and one with the panels in portrait position only dated 20 July 2018. The first estimates a SAP production of 2429.757 kWh, and the second an estimated production of 3357.45 kWh.

tch of roof area with panels layout

200F 1



15 PANELS

cription of panel layout:

3 PORTRAIT, 2 PORTRAIT, 3 LANDSCAPE

Roof	Degrees from South	Pitch of Roof	KK Figure	System Size	Shade Factor	Estimated Production
1	40°	29°	600°	kWp 4.05	0.90	2429 kWh
2	°	°	°	kWp		kWh
3	°	°	°	kWp		kWh
4	°	°	°	kWp		kWh
Total Estimated SAP Production						2429 kWh

And

TOTAL ESTIMATED PRODUCTION: 3357.45 kWh

Product change from:

Feed in tariff - 100% x 3.93 = 95.45
 Export tariff - 50% x 5.24 = 63.61
 Energy - 50% x 15.23 = 184.89
 Energy - 25% x 15.23 = 92.44
 YR 1 - 50% = 171.97
 YR 1 - 25% = 85.98

Product change to:

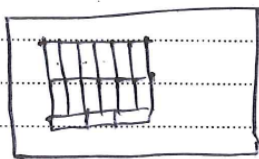
Feed in tariff - 100% x 3.93 = 131.93
 Export tariff - 50% x 5.24 = 87.92
 Energy - 50% x 15.23 = 255.55
 Energy - 25% x 15.23 = 127.77
 YR 1 - 50% = 237.70
 YR 1 - 25% = 118.85

ALSO

Price change from:

Roof 1

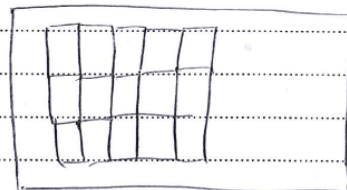
15 PANELS



12 PORTRAIT
3 LANDSCAPE

Price change to:

Roof FORMATION CHANGE TO



15 PANELS

PORTRAIT

20.7.18

A further page entitled "estimated year one returns" uses the 3357.45 kWh estimation to show the estimated first year benefit.

Your 4.05 kWp solar PV installation was estimated to yield 3357.45 kWh.

Potential Year One Benefit

Generation Tariff:	SAP Yield kWh	x 100%	x <u>3.93</u>	p/kWh	= £ <u>131.93</u>
Export Tariff:	SAP Yield kWh	x 50%	x <u>5.24</u>	p/kWh	= £ <u>87.92</u>
Energy Savings:	SAP Yield kWh	x 50%	x <u>15.23</u>	p/kWh	= £ <u>255.55</u>
Total Estimated Year One Benefit					= £ <u>475.40</u>

There is no reference to the true cost of the system, including interest, and his monthly loan repayments so, similarly to the loan agreement, I don't think it would have allowed Mr T to compare the true cost of the system to any benefit he may receive, or have been promised.

I'm satisfied that it is more likely than not that S told Mr T that the solar panel system would be self-funding and come at no additional cost to him. So, I've considered whether it was reasonable for him to have relied on that misrepresentation when entering into the contract taking account of the documents that were given to him. I've also considered whether any of the documents given to him were sufficiently clear to counter the misrepresentation made by S.

Taking all of the above into account, I consider that the various documents provided to Mr T over the period of time the contract was agreed were presented in such a way that it was not easy for him to compare his likely benefits with his outgoings and it would have been difficult for him to make an informed decision without relying on what he was told by the representative of S. So, I'm persuaded it is reasonable for Mr T to have relied on what he was told by the representative when he agreed to enter into the contract.

Has Mr T suffered a loss?

My view is that for the solar panels to be self-funding and come at no additional cost to Mr T, the monthly savings and benefits he would achieve should have been sufficient to meet his monthly loan repayments.

It is clear from the information that has been provided by Mr T and his representative that this has not been the case and there was a shortfall between his monthly loan repayments and any benefits he has received from the solar panel system.

For the reasons I've explained above, I find it likely that Mr T has suffered a loss as a result of the misrepresentation made by S. And as OCRF has equal liability for the misrepresentation made by S, I find that it is responsible for Mr T's loss.

Putting things right

The role of this service is to help settle disputes between consumers and businesses providing financial services fairly and reasonably with minimum formality. In cases like this one, determining compensation isn't an exact science. My role is to arrive at fair compensation taking account of the particular circumstances.

My view of Mr T's complaint is that it isn't so much about the solar panels themselves but that he was led to believe that they would be self-funding. And based on this I don't think it would be fair or proportionate to require the removal of the solar panels from his home.

Rather, I think, considering Mr T's comments and his individual circumstances the fair outcome here is to put him in a position where the solar panel system is cost neutral over the 5 year loan term, meaning that he's not disadvantaged by the misrepresentation.

So I think OCRF should calculate the benefits Mr T has benefitted from, and the likely benefits he will receive from the panels over the term of the loan and restructure his loan to ensure he pays no more than that.

If by recalculating the loan this way, Mr T's monthly repayments would reduce, meaning that he has paid more each month than he should have, he will have an overpayment balance. And as he would have been deprived of the monthly overpayment, I would expect the business to add 8% simple interest from the date of the overpayment to the date of settlement. So, I think the fairest resolution would be to let Mr T have the following options as to how he would like the overpayments to be used:

- a) the overpayments are used to reduce any outstanding balance of the restructured loan and he continues to make his current monthly payment resulting in the loan finishing early,
- b) the overpayments are used to reduce the outstanding balance of the restructured loan and he pays a new monthly payment until the end of the loan term,
- c) the overpayments are returned to Mr T and he continues to make his current monthly payment resulting in the loan finishing early, or
- d) the overpayments are returned to Mr T and he pays a new monthly payment until the end of the loan term.

If Mr T accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

I'm satisfied that there was sufficient information at the time that Mr T first complained to OCRF that means his complaint should have been upheld. The fact that this didn't happen undoubtedly caused him trouble and upset and consequently I'll make an award of £100 for this.

My final decision

My final decision is that Mr T's complaint should be upheld. In full and final settlement of it, I require Omni Capital Retail Finance Ltd to:

- allow Mr T to keep the solar panels,
- estimate the potential savings and income to Mr T from the panels over the 5-year term of the loan and rework it so he pays no more than this. Where possible, it should use Mr T's electricity bills and FIT statements to do this.
- add 8% simple interest* to any overpayment made from the date the overpayment was made to the date of settlement,
- allow Mr T to decide how he'd like any overpayments to be used, using the four options described above; and,
- pay Mr T £100 for the trouble and upset caused.

*If Omni Capital Retail Finance Ltd considers that it's required by HM Revenue & Customs to take income tax from that interest, it should tell Mr T how much it's taken off. It should also give him a certificate showing this if he asks for one so he can claim the tax from HM Revenue & Customs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 April 2022.

Sarah Holmes
Ombudsman