

## The complaint

Mrs W complains on behalf of Mr A, for whom she has power of attorney, about a loan provided to Mr A by Allium Money Limited (“Allium”) for the purchase of a solar panel and battery storage system (“the system”).

## What happened

In February 2022, Mr A purchased the system from a supplier which I’ll call “E”, using a fixed sum loan from Allium.

In July 2023, Mrs W complained to Allium on Mr A’s behalf. She said that Mr A hadn’t worked since July 2021 and his only income was from his late wife’s pension and he was heavily in debt – relying on credit cards and borrowing from family. She questioned how Allium agreed to lend to him in those circumstances.

Mrs W said that Mr A was hospitalised in January 2023 and has since moved into residential care from April 2023. Mr A has been diagnosed with a form of dementia and his prognosis is terminal. Mrs W says that Mr A was unwell before he purchased the system, and it should not have been sold to him. She had concerns about it when he told her about it but became aggravated whenever she asked him about it.

It was only after she was granted power of attorney that Mrs W found that the system is not delivering the benefits that Mr A was promised. Specifically, he has received no income from the Smart Export Guarantee (“SEG”) scheme. Mr A did not register for the scheme and Mrs W has been unable to do this on his behalf due to signal problems in the area meaning that smart meter readings cannot be taken remotely. Mrs W also points out that Mr W can no longer benefit from electricity savings from the system because he no longer lives at the property will not do so in future.

Allium responded to Mrs W to say that the checks it did before lending to Mr A were proportionate and showed that he could afford the repayments. This included looking at the information Mr A provided about his income and taking into account Credit Reference Agency (“CRA”) Data – including his existing borrowing and associated repayment history. Allium was not aware of Mr A’s health problems at that time, so this did not factor into its lending decision. The CRA data validated what Mr A had said about his income and showed he could afford the repayments. So, Allium had no reason to decline the application.

Unhappy with this, Mrs W contacted the Financial Ombudsman Service. She reiterated that the solar panels were not working as described.

Allium provided us with the information it had looked at when making its lending decision.

Our Investigator looked into what had happened and concluded that the complaint should be upheld. She said that the benefits of the system had been misrepresented to Mr A, and if that had not happened he wouldn’t have purchased the system. So, our Investigator recommended the solar panels be removed, the property reinstated, and the credit agreement be unwound – meaning that Mr A would receive a full refund of what he had paid

plus interest for the time he was without that money, plus an additional £100 compensation for the trouble and upset caused by Allium not considering the complaint beyond its lending decision.

Mrs W was happy with this recommendation, but Allium disagreed. Allium pointed out that the Investigator had relied heavily on Mr A's recollection of what he'd been told at the point of sale, but that this may not be reliable given his health problems.

Since the complaint has not been resolved, I've been asked to make a decision about what should happen next. I issued a provisional decision explaining why I was not planning to uphold this complaint.

Mrs W responded to my provisional decision. In summary, she said:

- She is extremely disappointed and questioned how I could reach such a different outcome to our Investigator.
- If Mr A's then wife's income was taken into account why was it not a joint loan? She had debts and financial commitments of her own and didn't contribute to meeting any household expenses.
- Mr A's then wife shared Mr A's understanding that the system would provide all their electricity needs such that they would have no electricity bills.
- Mr A understood the system was free/self-funding other than a £100 deposit and he wouldn't have entered the agreement otherwise – given his existing debts.
- The sales paperwork is not clear to a layperson.
- She is incredulous that the money was lent to Mr A. She previously provided Mr A's bank statements which show recovery interest charges for credit cards, overdraft interest and some companies being paid only when they threatened legal proceedings. He lived in a small village with limited public transport, but no provision seems to have been made for his running a car to get about. A few months after the sale, when Mrs W realised the extent of Mr A's debts, he was refused consolidation loans, so why was Allium willing to lend?

Allium confirmed it had nothing further it wanted to add before I make my final decision.

### **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 am sorry to hear about Mr A's health problems. I appreciate that dealing with this matter must be difficult for Mrs W.

My role is to make a decision based on what I feel is fair and reasonable in all the circumstances of this complaint. Having reviewed the entire file and Mrs W's responses to my provisional decision, have decided not to uphold this complaint. I appreciate that Mrs W will remain disappointed with this.

My findings in my provisional decision were as follows, which now forms part of my final decision:

#### Section 75 of the Consumer Credit Act ("CCA")

Section 75 of the CCA makes a lender liable for misrepresentation or breach of contract on the part of the supplier of goods or services when those goods or services are paid for using, in this case, a point-of-sale loan.

Here that means that if E misrepresented the system to Mr A (a misrepresentation being an untrue statement of fact that induced Mr A to enter into the contract when he otherwise wouldn't have done so) or if it breached its contract with him, Mr A could make a claim to Allium.

I've thought about this first, since the remedy for misrepresentation or breach of contract can range from enforcing the contract to its complete cancellation (with a full refund and return of the goods purchased).

#### Was there a misrepresentation or breach of contract?

I have decided that there is insufficient evidence for me to conclude there was a misrepresentation or breach of contract that means Allium should've accepted a claim under Section 75.

#### *Mr A's recollection of what he was told*

Mr A told Mrs W that his understanding of the benefits of the system were that:

- He won't have an electricity bill because his electricity would come from the system.
- He would receive payments for the electricity he didn't use that was exported to the grid.

While the system ought to result in lower electricity bills, it was never likely to mean that Mr A would not have to pay for any electricity that he used. At the time of sale his electricity bills show he was using over 10,000kWh per year. The solar panel system was expected to have the capacity to generate only 4,398 kWh. So, it could not have covered all his electricity needs.

So, Mr A's understanding of the benefits was not correct. However, it is not obvious whether that is because he was misled, because he misunderstood what he was told or because he simply misremembers.

Given Mr A's health issues, it is difficult to place too much weight on his recollection of what happened. For example, I would not be comfortable concluding his recollection is an accurate reflection what he was told by E.

#### *What the contract showed*

Where there is a dispute about what someone was told, it is important to look at the documents from the time of sale. These can often shed some light on what was likely discussed and what information may have been provided.

The contract could be clearer in terms of how the benefits were calculated, since it does not show the inflation assumptions used to calculate the benefits. But it does state that the system could be expected to generate 4,398 kWh of electricity in the first year.

But the contract does clearly show that Mr A could expect a benefit from income and savings over 25 years of £35,016.96 in total. It compares this to the total he'd agreed

to pay through using the loan, which was £20,320.00, to give a net benefit over 25 years of £14,696.95.

So, it seems likely that Mr A would've been told that the benefits of the system would exceed what he was agreeing to pay over the system's expected 25-year lifespan.

E has provided an additional document that shows the annual net benefits. But this is not on the contract held by Mr A, it is in a different format and E has been unable to show if, how or when this was sent to him. The outlay figures on the document does not match what Mr A agreed to pay and the net benefit over 25 years is different to that shown on the contract. So, I do not think I can place much weight on this additional document when reaching my decision.

*Was there a misrepresentation?*

My understanding is that E was certified by the Energy Performance Validation Scheme ("EPVS"), a renewable energy industry body, as having:

- "the competency to carry out accurate performance calculations, estimates and monetary savings within a reasonable range for your installation type"

And that EPVS:

- "undertakes regular independent checks of the installer's customers' individual performance estimates to ensure that accuracy remains consistent"

That does not mean that EPVS checked the calculations in this case. But it does mean that it was satisfied that E could be trusted to accurately calculate the benefits a system might provide.

I've done some rough calculations of my own of what benefit might be expected from the system. And while E's calculations resulted in a higher benefit than my own calculations, I don't think the difference is sufficient for me to conclude that E's calculations – the results of which are shown on the contract – were unreasonable or unrealistic.

That being the case, it is hard for me to conclude that E misrepresented the potential benefits of the system to Mr A at the point of sale.

Unfortunately, Mr A did not register the system to receive SEG payments. It is unclear why. And Mrs W has so far been unable to either. However, I don't think it would've been clear to E at the time of sale that registering for SEG payments would be a problem. The system appears to have been installed correctly such that it ought to be eligible – for example it seems to have a smart export meter.

I'm also mindful that the contract indicates the likely income from SEG payments would only be worth £563.99 over 25 years, it being assumed that the vast majority of electricity would be used in the home rather than exported. So, even if it had been made clear to Mr A that the income was not guaranteed – or that there may be no income – I don't think it is likely that this would've made a difference to his decision to purchase the system.

Overall, I do not think the system was misrepresented to Mr A such that he was induced into entering the contract when he otherwise would not have done so.

I provide some further information about the Smart Export Guarantee at the end of this decision, which may be helpful for Mrs W.

*Was there a breach of contract?*

The contract shows the system was expected to generate 4,398 kWh of electricity in the first year.

Mrs W has said she contacted E's salesperson around July 2023. At that time, she checked the meter reading, and the salesperson indicated it was as expected. That suggests to me that the system was working properly in the first year – and generating the expected amount of electricity.

With this in mind I do not think there was a breach of contract. The system supplied was capable of generating the promised amount of electricity and the income and savings benefits would've reasonably have been expected to follow from this. So, I do not think there was a breach of contract.

It seems the system stopped generating electricity at some point. But it appears likely that Mrs W inadvertently turned off the system when switching of the electricity in the property, which has been uninhabited since Mr A moved into residential care in April 2023.

However, if Mrs W finds there is a fault with the system, or wishes for it to be inspected, she could contact E to request they inspect it.

Was the lending irresponsible and/or unaffordable?

Mrs W has indicated concerns about the loan being provided to Mr A given his circumstances at the time.

When lenders look at any application to borrow money, they need to make sure there are proportionate checks in place. The checks should ensure that any credit that's offered is affordable and sustainable for the borrower. There's no set list of checks a lender must complete, so I've thought about whether the checks completed by Allium were, in my opinion, proportionate and reasonable based on the lending it provided.

Allium has provided evidence of the checks it carried out at the time. This included looking at the application information Mr A provided and information about him obtained from a Credit Reference Agency ("CRA").

The application showed that Mr A was retired and had a gross income of his own of £18,000 per year, with a total gross household income of £36,000 per year. The CRA data confirmed this income was accurate and showed Mr A already had some borrowing including a mortgage. But taking all of that into account and allowing for other expenses such as food and bills, Allium concluded that the loan, with repayments of £166.53 per month, was affordable. Allium calculated that Mr A would still be left with an estimated disposable income of over £600 per month.

Given the amount being borrowed, the required monthly repayments and Mr A's income at the time (which included his then wife's income), I'm satisfied that Allium carried out proportionate checks. And that its decision to lend was not irresponsible based on the information available to it. Nor that it had reason to think that the lending would be unaffordable for Mr A.

I appreciate that Mrs W has raised concerns about Mr A's health at the time. But she has confirmed that – despite his condition – he was still “articulate and convincing” at the time of sale. She also spoke to E's salesperson who confirmed he had no concerns about Mr A during the sale. I understand that Mr A's wife was also present at the time of sale. So, I do not think that E or Allium ought to have had any concerns about Mr A's capacity to enter into or understand the purchase or the loan agreement at that time.

Overall, I do not think that Allium's decision to lend to Mr A was unreasonable or irresponsible, or that Allium ought to have concluded the lending would not be affordable for Mr A.

Did Allium act unfairly or unreasonably in any other way?

Finally, I have thought about whether Allium acted unfairly or unreasonably in any other way, including thinking about whether a Court might conclude that the relationship between Allium and Mr A was unfair on him under Section 140A of the CCA.

In doing so, I've considered the relationship as a whole, including what happened during the sale of the solar panels (as Section 56 of the CCA has the effect of making E an agent of Allium). However, I don't think there was a misrepresentation or breach of contract by E, nor do I think that Allium lent irresponsibly to Mr A or otherwise treated him unfairly in relation to this matter. So, I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome.

I appreciate that Mrs W will be disappointed by my provisional decision. Not least because Mr A is no longer in a position to benefit from the system. However, I understand Mrs W's intention is to sell the property. It is likely that the solar panel installation and any potential future income and savings from it will be taken into account in the sale price realised. So, this may enable Mr A's outlay to be recouped to some extent when the property is sold.

Additional information on the Smart Export Guarantee

Mrs W has had problems registering for SEG payments with Mr A's current electricity supplier, which has cited problems reading the smart meter remotely, and that the electricity supply at the property is not eligible for a smart meter.

It is not clear to me that the SEG requires the export meter to be read remotely or for the electricity supply meter to be a smart one (although that might be a requirement of Mr A's current supplier, there are a number of energy companies that provide SEG tariffs). So, I can't say that the system is not eligible to be registered for the Smart Export Guarantee now or in the future – for example with a different energy company.

Ofgem has information for generators on its website at, including how it works, who can apply and how, plus what to do if you have a complaint. I provide a link to this below:

[www.ofgem.gov.uk/sites/default/files/docs/2020/02/seg\\_generator\\_guidance - final for publication.pdf](http://www.ofgem.gov.uk/sites/default/files/docs/2020/02/seg_generator_guidance_-_final_for_publication.pdf)

Mrs W's additional comments

I've thought about what Mrs W has said. But this has not changed by decision.

My role is to make a decision based on what I think is fair and reasonable in all the circumstances of the complaint. Sometimes I will reach a different outcome to our Investigators, as has happened here. I appreciate it is frustrating when this happens.

I understand that Mrs W provided Mr A's bank statements at our Investigator's request, since our Investigator concluded that Allium had not done sufficient checks to ensure Mr A could afford the loan.

However, I've reached a different conclusion. That based on the information Allium had at the time, it did enough to check the loan was affordable and made a reasonable decision that it was. So, I don't think Allium needed to look further into Mr A's financial circumstances. It did not, and I don't think it should have, had more information about Mr A's circumstances, such as some of the detail from his bank statements to which Mrs W has referred. In my opinion, the information available to Allium did not indicate that the loan was unaffordable nor that it would be irresponsible to provide the loan to Mr A.

The income information relied on was provided by Mr A. I think Allium was at liberty to rely on this, particularly when the CRA data available seemed to verify its accuracy. In this instance I do not think it unreasonable to assume that Mr A would benefit some of his then wife's income – you would normally expect household expenses to be shared in a two-income household. Allium had no reason to think that was not the case here and its allowance for this appears reasonable.

The CRA data showed that Mr A had other loans and credit cards, and the repayments for these were taken into account by Allium. Mr A had missed just one payment in the last three years, so it did not appear that he was in or at risk of financial difficulty. I appreciate the reality may have been different to what the CRA data showed – that Mr A was only just keeping up with his commitments. But the information available to Allium at the time did not show this, so it had no reason to make a different decision, and no justification for delving deeper into Mr A's financial circumstances.

I acknowledged Mr A's understanding of the benefits of the system in my provisional decision. That his then wife shared his understanding does not change my opinion of whether there was a misrepresentation or breach of contract. She may have been influenced in her understanding by Mr A as much or more than E's sales representative. So, this is not sufficient to tip the balance of evidence in favour of me concluding there was a misrepresentation.

Overall, I am not persuaded to change my provisional decision.

### **My final decision**

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 September 2024.

Phillip Lai-Fang  
**Ombudsman**