

Complaint

Mr S has complained that Creation Consumer Finance Ltd (“Creation”) rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

Background

Mr S bought solar panels for his home in 2013. The purchase was funded by a loan from Creation, and that business is therefore liable for the acts and omissions of the installer under the relevant legislation. In this case, that relates to the installer misleading Mr S into believing that the panels would be self-funding, which they weren’t.

Creation made an offer to settle the complaint based on the amounts Mr S repaid in 2014, when he settled the loan early with Creation. Mr S felt the offer did not fully compensate him for his losses and referred the matter to us. He wanted Creation to offer compensation based on the figure he borrowed, not the amount he settled the account for.

Mr S’s complaint was considered by one of our adjudicators. She thought that the benefits of the panels were mis-represented to Mr S, and that fair redress would be for the loan to be restructured to effectively make the panels self-funding. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

She explained to Mr S that, as he had repaid the Creation loan early, he had not paid the full amount set out on his credit agreement - interest was adjusted to take account of the early repayment of the loan. So, as he hadn’t repaid the amount on his credit agreement, he would not be entitled to have his settlement based on that figure. At this time Mr S explained that he had repaid the Creation loan by taking a refinance loan that enabled him to repay the Creation loan early. So, while he appeared to understand what our adjudicator was saying, he still felt he hadn’t been fully compensated for his losses.

Our Adjudicator then reviewed the complaint based on the evidence Mr S provided and explained to Creation that Mr S had taken a refinance loan with another provider to allow him to settle his loan with Creation early. And that Creation should take into account the losses Mr S incurred with the refinance loan he took with an alternative provider in order to fully compensate him.

Creation said it accepted our adjudicator’s view of the complaint and said it would make an offer to settle the case including the losses Mr S had incurred in relation to the refinance loan. But it didn’t make an offer or explain why it hadn’t done so. So, the case was passed to an ombudsman.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Creation is familiar with all the rules, regulations and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach. So, I don't consider it necessary to set all of that out in this decision.

Having carefully considered everything provided, for the same reasons as those explained by the adjudicator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mr S was not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for him.

So, I think that Creation didn't treat Mr S fairly and he lost out because of what Creation did wrong. And this means that it should put things right.

Fair compensation – what Creation needs to do to put things right for Mr S

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr S's complaint for Creation to put things right by recalculating the original loan based on the known and assumed savings and income to Mr S from the solar panels over the term of the loan so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

In the event the calculation shows that Mr S is paying (or has paid) more than he should have Creation needs to reimburse Mr S accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr S by way of explanation.

As explained above, I understand Mr S has settled his loan early, so Creation offered to pay Mr S the difference between what he paid in total and what the loan should have been under the restructure above, with 8% interest.

But Mr S has said he settled the loan by refinancing. I understand Mr S settled his Creation and refinance loan many years ago (2014 and 2015 respectively). Due to this, the documents related to the closure of his refinance loan are no longer available – I don't think that's surprising. But I have reviewed the evidence Mr S has been able to provide (which I understand has also been passed to Creation for it to review). Based on what I've seen, I'm satisfied that Mr S did use a refinance loan to settle his Creation loan, and has provided sufficient evidence to allow Creation to work out redress in line with our established approach to these types of cases.

As our adjudicator explained, because Mr S has settled the loan by refinancing, and Mr S has supplied sufficient evidence of the refinance to Creation, Creation should:

1. Refund the extra Mr S paid each month with the Creation loan.
2. Add simple interest from the date of each payment until Mr S receives his refund.
3. Refund the extra Mr S paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr S receives his refund.
5. Pay Mr S the difference between the amount now owed and the amount he would've owed if the system had been self-funding

I understand Creation has offered to pay £100 compensation to Mr S for any inconvenience caused in relation to this complaint. I agree with that offer and direct Creation to pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr S's complaint. Creation Consumer Finance Ltd should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 March 2022.

Asma Begum
Ombudsman