

The complaint

Mr H is unhappy that Creation Consumer Finance Limited hasn't responded to his claim under Section 75 of the Consumer Credit Act 1974 (the 'Act') for help with a guaranteed faulty solar panel inverter he'd bought on finance.

What happened

Mr H purchased a solar panel system in 2013 from a supplier that I'll call M. Creation financed that purchase. As part of the sale, M provided Mr H with a 10-year insurance-backed guarantee for the system. Both M and the insurer have since gone bust. In June 2020, Mr H's inverter stopped working. He consulted the manufacturer and was told it was out of the two-year manufacturer's warranty. But the error code indicated that it would need to be replaced.

Mr H first contacted Creation in mid-June 2020 to make a claim. He was told his claim would be passed to the Section 75 team and that they'd be in touch within 5 days. He heard nothing and chased this up a number of times over the following month. He still heard nothing back and escalated his claim to a complaint. But there was still no response, other than Creation's assertion that it was dealing with the insolvency of one of its suppliers and so Mr H would have to wait until his complaint reached the top of the queue.

Mr H brought his complaint to this Service in late July 2020. He waited until September 2020, but as he still hadn't heard back from Creation, he got some quotes and decided to get the inverter replaced himself. This cost £937.50 (including VAT). As the solar panels hadn't been working for the entire peak summer generation period, he calculated that over the 85 days' downtime, he'd lost £196.22 in Feed-in-Tariff (FIT) and export payments.

When we got in touch with Creation to ask for its file, it told us that it had settled Mr H's complaint in April 2020. But it was mistaken, in that it had confused Mr H's previous solar panel misrepresentation complaint with this new one about the inverter.

Our investigator considered Mr H's complaint and recommended that it be upheld. She thought that he should be paid the cost of the inverter, the lost generation revenue, interest on both those amounts and £100 for the distress and convenience that he'd been caused through Creation's failure to answer his claim.

Creation didn't respond until another of our investigators told the parties that he'd be putting the complaint to an ombudsman for a decision. Creation again referred to the offer for the misrepresentation complaint. That investigator also told Creation that this was a different complaint, whereupon it said that it thought the complaint was out of this Service's jurisdiction on the basis of time, the sale having been concluded more than 6 years ago and any rights that Mr H may have had under the Consumer Rights Act also having expired.

Our investigator again informed Creation that this wasn't a complaint about the sale or the satisfactory quality of the inverter, it was about M and the insurer's failure to answer a 10-year guarantee which was sold with the solar panel system. That guarantee didn't expire until 2023, so it was still covered by Section 75 of the Act.

Creation didn't respond to this. So, the matter has come to me for a 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.

Mr H will be pleased to hear that I shall be upholding his complaint. May I first say though how sorry I am that there has been such a long wait for a decision on this matter. This Service has received a significant number of complaints about solar panels, which we've been working through in date order over the last couple of years. And Mr H's complaint has unfortunately been caught up in that back-log.

This complaint is, however, a good example of one where Creation could have been much more proactive in addressing its customer's concerns. Mr H really shouldn't have needed to come to us in the first place if his claim had been dealt with at the time - or at least at some point in the last year and a half. It's also been most unfortunate that Creation doesn't appear to have properly read Mr H's complaint form or our investigator's initial view, thinking up until recently that this complaint was about something it had dealt with previously.

Jurisdiction

I'll first address whether or not this complaint is within our jurisdiction. As our investigator has already said, the complaint isn't about the sale of the solar panels (or the inverter). It concerns M and the insurer's inability to cover the inverter's failure under the insurance-backed guarantee following their demise. We've not been told by Creation of any reason why the inverter shouldn't be covered by that guarantee. And it doesn't expire until 2023.

So, the act or omission complained about here is Creation's failure to respond to Mr H's Section 75 claim for help by sending someone out to fix or replace the inverter under the terms of the guarantee and any warranty provided by M. That failure took place after the inverter stopped working in mid-June 2020. The claim and then the complaint were brought within a month of that. So, this complaint was brought in time and we do have jurisdiction to look into it.

The Broken Inverter

Mr H has provided us with evidence that the inverter has broken as well as an invoice for the cost of its replacement. So, I've found that he has suffered a loss here. I've seen the terms of the guarantee and these do purport to cover any failure by M to come out and repair any item for which it is responsible. I haven't seen the warranty that Mr H was given for his inverter. And I do know that the manufacturer's two-year warranty has expired. But in my experience, solar panel suppliers often give their own 10-year warranties on panels and inverters. That's likely here to because the insurance-backed guarantee was also for 10 years. So, it's my finding that, as I've not seen any evidence to the contrary, Mr H had a 10-year warranty here as well.

Under Section 75 of the Act, Creation is responsible for any contractual agreement made in relation to the financed solar panels in the same way that M would have been, had it still been around to answer Mr H's claim. So, Creation needs to take responsibility for the failed inverter, the warranty and guarantee having been provided as part of the sale of the panels, which was financed by Creation.

Creation has mentioned a settlement agreement that it made with Mr H for a previous misrepresentation claim and complaint that he raised. I've seen Creation's offer and Mr H's

acceptance of that. But that offer wasn't made with respect to this claim for the broken inverter. In its final response letter to that previous complaint, Creation said that its offer was made – *'in full and final settlement of any issues, complaints or claims your client [Mr H] has relating to the sale and/or performance of the system and the finance provided by Creation.'*

Although Creation hasn't raised this, I think I should cover it off in this decision, particularly given that Mr H has also recently told us that his voltage optimiser has just failed as well. He'll likely be making a claim to Creation for that shortly. As far as I can tell from the limited documentation that we've been provided by Creation, the misrepresentation complaint was about a mis-sale of the system as a whole. Mr H had been told the panels would be self-funding. Which they weren't. Creation made a goodwill settlement offer for that complaint, whereby it restructured Mr H's loan to make it self-funding and refunded him any overpayments plus interest.

So, the language I've quoted above must be read and interpreted in light of the complaint that had been made at the time. My interpretation of it is that Mr H settled any claim he may have for the misrepresentations made at the time of the sale. That settlement does not, on the face of it, include any problems that Mr H may have with the constituent parts of the solar panel system in the future. In this case, Mr H's claim is under the terms of the guarantee. It doesn't relate to the *'sale and/or performance'* of the system which I consider must be read to mean the misrepresentations made about how the system would provide enough energy savings and income to pay for itself. So, I've decided that Mr H isn't prohibited from bringing this complaint by the terms of that settlement agreement.

Fair Compensation

I've thought about what fair compensation should be here for the loss Mr H has suffered. Creation never answered his claim, so I don't know whether or not it would have agreed to pay for the inverter. But Mr H's complaint about that failure to answer his claim leads to a natural conclusion in terms of fair compensation. I consider that the claim should properly have been paid. Mr H ended up having to get the inverter replaced himself. He got a reasonable quote for this and paid £937.50. From my experience, that's well within the range of the cost of these things.

Mr H also lost the FIT and export income he would have expected over the peak summer months. He's helpfully provided his calculations about the amounts lost. And these appear reasonable to me. So, I've decided that the financial loss of £196.22 should also be paid by Creation.

Mr H lost both these sums in or around September 2020. So, he's been without that money now for well over a year. Creation should compensate him for this by paying 8% interest.

Mr H was also put to the trouble of having to continually chase up this claim. That will have been both distressing for him as well as an inconvenience. And I agree with our investigator that £100 compensation is appropriate for that.

My jurisdiction decision

I've decided that this complaint has been brought to us in time and that we can consider it.

My final decision

It's my final decision to uphold this complaint. I require that Creation Consumer Finance Limited must:

- Pay Mr H £937.50 for the replacement inverter;
- Pay Mr H £196.22 for the lost revenue from the solar panel system;
- Pay Mr H simple interest at 8%* a year on the above amounts from the time that he paid for the inverter, in or around September 2020, until they're repaid; and
- Pay Mr H £100 compensation for the distress and inconvenience he's been caused.

* HM Revenue and Customs may require that Creation deduct tax from any interest that it pays. Should Mr H request it, Creation should provide him with a certificate showing how much tax has been taken off so he can reclaim it if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 March 2022.

James Kennard
Ombudsman