

The complaint

Mr A has complained that Creation Consumer Finance Ltd rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr A bought solar panels for his home in May 2015. 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 A into believing that the panels would be self-funding, which they weren't.

Mr A's complaint was considered by one of our adjudicators. He thought that the benefits of the panels were mis-represented to the consumer, 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. Creation accepted this view and advised they would provide their calculations as directed by the adjudicator. But these calculations weren't provided and so, the case was passed to an Ombudsman.

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.

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 A was not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for his. And I also recognise Creation has accepted the panels were mis-represented following our adjudicator's view.

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

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr A's complaint for Creation to put things right by recalculating the original loan based on the known and assumed savings and income to Mr A 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.

If the event the calculation shows that Mr A is paying (or has paid) more than he should have Creation need to reimburse Mr A accordingly. Should the calculation show that the mis-presentation has not caused a financial loss, then the calculation should be shared with Mr A by way of explanation.

If the calculation shows this is a loss, then while the loan is ongoing, I require Creation to restructure Mr A's loan. They should recalculate the loan to put Mr A in a position where the solar panel system is cost neutral over the term of the loan.

Normally, by recalculating the loan this way, Mr A's monthly repayments would reduce, meaning that he would've paid more each month than he should've done resulting in an overpayment balance. And Mr A would have been deprived of the monthly overpayment, I would expect a 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 A have the following options as to how he would like his overpayments to be used:

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

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

If the Mr A has settled the loan, Creation should pay Mr A the difference between what he paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mr A has settled the loan by refinancing, he should supply evidence of the refinance, to Creation and Creation should:

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

I'm satisfied that there was sufficient information available at the time that Mr A first contacted Creation that means the claim should have been upheld. I direct that Creation should pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr A'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 A to accept or reject my decision before 13 April 2022.

Josh Haskey
Ombudsman