

The complaint

Mr M and Ms S has complained that Creation Consumer Finance Ltd hasn't settled their claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Mr M and Ms S bought solar panels for their home in 2018. 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 M and Ms S into believing that the panels would be self-funding, which they weren't.

Creation offered to restructure the loan to make the panels cost no more than the benefit they would provide over a ten-year period. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Our adjudicator thought the offer was fair. Mr M and Ms S had some questions about this but were not satisfied with the answers provided. As such they asked for an ombudsman to make 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.

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.

Creation has made an offer of settlement. So, I don't need to decide if there was a misrepresentation – only what must happen to put this right. I set this out below.

Putting things right

I think that it would be fair and reasonable in all the circumstances of Mr M and Ms 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 M and Ms S from the solar panels over a ten-year period so they pay no more than that, and they keep the solar panel system, and any future benefits once the loan has ended.

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

If the calculation shows there is a loss, then where the loan is ongoing, I require Creation to restructure Mr M and Ms S's loan. It should recalculate the loan to put Mr M and Ms S in a position where the solar panel system is cost neutral over a ten-year period.

Normally, by recalculating the loan this way, a consumer's monthly repayments would reduce, meaning that they would've paid more each month than they should've done resulting in an overpayment balance. And as a consumer 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 M and Ms S have the following options as to how they would like their overpayments to be used:

- A. the overpayments are used to reduce the outstanding balance of the loan and they continue to make their current monthly payment resulting in the loan finishing early,
- B. the overpayments are used to reduce the outstanding balance of the loan and they pay a new monthly payment until the end of the loan term,
- C. the overpayments are returned to Mr M and Ms S and they continue to make their current monthly payment resulting in their loan finishing early, or
- D. the overpayments are returned to Mr M and Ms S and they pay a new monthly payment until the end of the loan term.

If Mr M and Ms S accepts my decision, they should indicate on the acceptance form which option they wish to accept.

If Mr M and Ms S has settled the loan, Creation should pay them the difference between what they paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mr M and Ms S has settled the loan by refinancing, they should supply evidence of the refinance, to Creation and Creation should:

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

I'm satisfied that there was sufficient information available at the time that Mr M and Ms S 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 M and Ms 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 M and Ms S to accept or reject my decision before 12 August 2022.

Phillip Lai-Fang
Ombudsman