

The complaint

Mrs P is unhappy with the response of Creation Consumer Finance Ltd (Creation), following her complaints made against it under Section 75 of the Consumer Credit Act 1974 ("CCA").

What happened

Mrs P complains that she tried to claim under Section 75 (s75) for problems with her solar panel system but had not received a response from Creation. She said her solar panel inverter was faulty, and delays in repairing it had caused her a financial loss. She said she was told the wrong inverter had been installed in the first place.

As she was unhappy with the response she got from Creation, she brought her complaint to this service. Mrs P explained to the investigator that the inverter had broken down twice, it had been replaced once by the installer, and once by Creation. She had been told by the electrician from Creation that the wrong inverter had been installed. She said this had cost her money, and she felt the whole system had been mis-represented to her as the panels were not generating what she had been promised when she bought the panels.

The investigator wrote to Creation asking them to address all of Mrs P's points.

As Creation did not respond to either this service or Mrs P, the investigator reviewed the case and issued her findings. She said she thought the installer had misrepresented the benefits of the solar panel system to Mrs P, and the paperwork she had didn't make it clear that the panels would not be self-funding. To resolve this, she recommended that Creation calculate the actual and potential income and savings to Mrs P from her panels over 10 years and ensure Mrs P paid no more than that on her loan. She also recommended that Creation pay the £60 cost of the electrician and a further £200 for the trouble and upset caused.

Mrs P accepted the view. However, Creation did not respond. As such the case was passed for 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I would consider to have been good industry practice at the relevant time.

In this case the relevant law includes Section 56 ("s56") and s75 of the CCA. S75 provides protection for consumers for goods or services bought using credit. It states:

“If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in the respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

As Mrs P paid for the solar panel system with a fixed sum loan, s75 applies to this transaction. This means that Mrs P could claim against Creation – the creditor – for any misrepresentation or breach of contract by P in the same way that she could have claimed against P, the supplier. So, I’ve taken s75 into account when deciding what is fair in the circumstances of this complaint.

S56 is also relevant. This is because it says that any negotiations between Mrs P and the installer, as the supplier, are deemed to have been conducted by them as an agent for Creation.

What happened?

If there is a dispute about what happened, I must decide on the balance of probabilities – that is, what I consider to have been most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

Mrs P has said that during the sales meeting she was told that her monthly loan repayments would be met by the financial benefits she’d receive from the solar panel system. And this hasn’t happened. From what I can see Mrs P had no reason to have agreed to the installation of the panels, paid for by a loan, which would increase her monthly outgoings.

Based on this, I think it’s unlikely that she would’ve agreed to the solar panel system and the loan with Creation, unless she had been led to believe that her monthly loan repayments would be covered by the financial benefits she’d receive meaning the solar panels would come at no additional financial cost to her.

I’ve also considered the paperwork that Mrs P has supplied. Like the investigator I think in order for Mrs P to have a clear idea of the actual costs and likely benefits, she would need to be able to compare her actual outgoings with her estimated incomings.

From the evidence I have, I’m not persuaded that Mrs P had this opportunity. The order is dated 1 November 2013, and sets out the cost of the panels, but doesn’t include any mention of the loan, the cost of the interest, and nothing on the likely benefits from the panels. There are some details of the benefits on the Customer Satisfaction Note, but this is dated over a month later, and after the installation had taken place. So, I don’t think this would have informed Mrs P’s decision.

I’m satisfied that Creation has been given sufficient opportunity to provide its own evidence in respect of Mrs P’s complaint about the misrepresentation of her panels. As it has not responded, I can only base my decision on the evidence I have and therefore, I accept Mrs P’s version of events.

I’ve also considered the issue of Mrs P’s inverter. The only information we received from Creation on this point was that the matter had been resolved, but Mrs P said that was not the case. Mrs P has said due to the problems with the inverter, she has lost out on the benefits of her panels and incurred a cost of £60 getting her own electrician to remove the inverter. Creation have not responded on this issue to either this service or Mrs P or provided any evidence to dispute Mrs P’s version of events.

The Consumer Rights Act says that a consumer can expect a service (such as installation of solar panels and associated items) to be carried out with reasonable care and skill. I think it is reasonable to expect the panels and the associated purchases are installed correctly and safely. So, if in this case the installation wasn't carried out correctly, the installer/supplier or Creation would be responsible for repairs or replacement of damaged items.

On the evidence and arguments presented, I can only conclude that Mrs P has suffered a financial loss due to the issues with the inverter and it falls to Creation to remedy that loss.

Putting things right

The role of this service is to help settle disputes between consumers and businesses providing financial services fairly and reasonably with minimum formality. In cases like this one, determining fair compensation isn't an exact science. My role is to arrive at fair compensation taking account of the particular circumstances.

My view of Mrs P's complaint is that it's less about the solar panels and more that she hasn't seen the benefits she was led to expect. Because of this I don't think it would be fair or proportionate to require the removal of the solar panels from her home. Rather, by adjusting the loan to ensure she pays no more than the actual and likely benefits over a 10-year period, the financial impact of the misrepresentations is removed. If the calculations are done using Mrs P's actual bills and fit statements, this would also ensure that she does not lose out for the periods she had problems with the inverter.

By ensuring that Mrs P's monthly loan repayments are no more than the benefits she would have received from the solar panel system, it is likely that she would have overpaid each month. And as Mrs P would have been deprived of this monthly overpayment, I would expect Creation to add 8% simple interest from the date the overpayment was made until the date of the settlement.

I also think it's fair for Creation to cover the cost of the electrician Mrs P called to try and repair her inverter.

I also think that the way Creation has dealt with Mrs P will have caused her trouble and upset. In recognition of this, I think Creation should pay Mrs P £200.

My final decision

My final decision is that Mrs P's complaint should be upheld. In full and final settlement of it, I require Creation Consumer Finance Ltd to:

- allow Mrs P to keep the solar panels,
- estimate the potential savings and income to Mrs P from the panels over a 10-year period and rework it so she pays no more than this. Where possible, it should use Mrs P's electricity bills and FIT statements to do this.
- add 8% simple interest* to any overpayment made from the date the overpayment was made to the date of settlement,
- Reimburse Mrs P the cost of the electrician
- pay Mrs P £200 for the trouble and upset caused.

*If Creation Consumer Finance Ltd considers that it's required by HM Revenue & Customs to take income tax from that interest, it should tell Mrs P how much it's taken off. It should also give her a certificate showing this if she asks for one so she can claim the tax from HM Revenue & Customs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 17 April 2023.

Sarah Holmes
Ombudsman