

The complaint

Ms W has complained that Creation Consumer Finance Ltd rejected her claim against it under Section 75 of the Consumer Credit Act 1974.

What happened

Ms W bought solar panels for her home in January 2016. 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 Ms W into believing that the panels would be self-funding, which they weren't.

Ms W's complaint was considered by one of our adjudicators. She 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 didn't respond so the case was passed to me.

I issued a provisional decision on 3 March 2022, where I explained my intention to uphold the complaint. But I explained I intended to direct Creation to do something different to the view provided by our adjudicator. In that decision I said:

"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, it's my intention to uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Ms W was not given clear information to demonstrate that the solar panels would not be self-funding and would equate to an additional cost for her.

So, I think that Creation didn't treat Ms W fairly and she lost out because of what Creation did wrong. And this means that it should put things right. But what I think it should do differs slightly from the recommendation made by our investigator.

Fair compensation – what Creation needs to do to put things right for Ms W.

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Ms W's complaint for Creation to put things right by recalculating the original loan based on the known and assumed savings and income to Ms W from the solar panels over the 10-year term of the loan so she pays no more than that, and she keeps the solar panel system, and any future benefits once the loan has ended.

And this calculation should also factor in the fact Ms W had been unable register for FIT payments. Because of this, I think Ms W has lost out even more financially, as they didn't

receive this income. So, Creation should ensure this financial loss is covered as part of their calculations.

I understand Creation may say it wasn't their fault that Ms W was unable to register for FIT payments. But I don't think this matters in this situation. As I'm satisfied the misrepresentation by Creation included Ms W into entering in the contract, our service is able to direct a complete unwinding of the contract. So, the fact no FIT payments have been considered should be taken into consideration.

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

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

Normally, by recalculating the loan this way, Ms W's monthly repayments would reduce, meaning that she would've paid more each month than she 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 Ms W have the following options as to how she would like her overpayments to be used:

- a) the overpayments are used to reduce the outstanding balance of the loan and Ms W continues to make her current monthly payment resulting in the loan finishing early,*
- b) the overpayments are used to reduce the outstanding balance of the loan and Ms W pays a new monthly payment until the end of the loan term,*
- c) the overpayments are returned to Ms W and she continues to make her current monthly payment resulting in her loan finishing early, or*
- d) the overpayments are returned to Ms W and she pays a new monthly payment until the end of the loan term.*

If Ms W accepts my decision, she should indicate on the acceptance form which option she wishes to accept.

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

If Ms W has settled the loan by refinancing, she should supply evidence of the refinance, to Creation and Creation should:

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

I'm satisfied that there was sufficient information available at the time that Ms W 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."

Neither Ms W or Creation provided any further comments or additional information in relation to my provisional 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.

Having done so, I see no reason to change my initial decision. My decision remains the same that I think a misrepresentation took place and Ms W was not given clear information to demonstrate that the solar panels would not be self-funding and would equate to an additional cost for her.

Putting things right

I think Creation should put things right in the way I set out in my provisional decision. For clarity, I've included this wording again.

I think that it would be fair and reasonable in all the circumstances of Ms W's complaint for Creation to put things right by recalculating the original loan based on the known and assumed savings and income to Ms W from the solar panels over the 10 year term of the loan so she pays no more than that, and she keeps the solar panel system, and any future benefits once the loan has ended.

And this calculation should also factor in the fact Ms W had been unable register for FIT payments. Because of this, I think Ms W has lost out even more financially, as they didn't receive this income. So, Creation should ensure this financial loss is covered as part of their calculations.

I understand Creation may say it wasn't their fault that Ms W was unable to register for FIT payments. But I don't think this matter's in this situation. As I'm satisfied the misrepresentation by Creation included Ms W into entering in the contract, our service is able to direct a complete unwinding of the contract. So, the fact no FIT payments have been considered should be taken into consideration.

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

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

Normally, by recalculating the loan this way, Ms W's monthly repayments would reduce, meaning that she would've paid more each month than she 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 Ms W have the following options as to how she would like her overpayments to be used:

- a) the overpayments are used to reduce the outstanding balance of the loan and Ms W continues to make her current monthly payment resulting in the loan finishing early,
- b) the overpayments are used to reduce the outstanding balance of the loan and Ms W pays a new monthly payment until the end of the loan term,

- c) the overpayments are returned to Ms W and she continues to make her current monthly payment resulting in her loan finishing early, or
- d) the overpayments are returned to Ms W and she pays a new monthly payment until the end of the loan term.

If Ms W accepts my decision, she should indicate on the acceptance form which option she wishes to accept.

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If Ms W has settled the loan by refinancing, she should supply evidence of the refinance, to Creation and Creation should:

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

I'm satisfied that there was sufficient information available at the time that Ms W 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 Ms W'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 Ms W to accept or reject my decision before 29 April 2022.

Josh Haskey
Ombudsman