

Complaint

Mrs S has complained that Creation Consumer Finance Ltd (“Creation”) rejected her claim against it under Section 75 of the Consumer Credit Act 1974.

Background

Mrs S bought solar panels for her home in 2011. 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 Mrs S into believing that the panels would be self-funding, which they weren’t.

Mrs S’s complaint was considered by one of our adjudicators. She thought that the benefits of the panels were mis-represented to Mrs S, 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 an ombudsman.

My findings

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 Mrs S 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 Mrs S fairly and she lost out because of what Creation did wrong. And this means that it should put things right.

Fair compensation – what Creation needs to do to put things right for Mrs S

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

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

If the calculation shows there is a loss, then where the loan is ongoing, I require Creation to restructure Mrs S's loan. It should recalculate the loan to put Mrs S in a position where the solar panel system is cost neutral over the 10-year loan term.

Normally, by recalculating the loan this way, Mrs S'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 Mrs S 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 she 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 she pays a new monthly payment until the end of the loan term,
- c) the overpayments are returned to Mrs S and she continues to make her current monthly payment resulting in her loan finishing early, or
- d) the overpayments are returned to Mrs S and she pays a new monthly payment until the end of the loan term.

If Mrs S accepts my decision, she should indicate on the acceptance form which option she wishes to accept

I understand Mrs S may have already paid off her loan. If Mrs S has settled the loan, Creation should pay Mrs S the difference between what she paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mrs S has settled the loan by refinancing, Mrs S should supply evidence of the refinance to Creation, and Creation should:

1. Refund the extra Mrs S paid each month with the Creation loan.
2. Add simple interest from the date of each payment until Mrs S receives her refund.
3. Refund the extra Mrs S paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mrs S receives her refund.
5. Pay Mrs S 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 Mrs 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 Mrs 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 Mrs S to accept or reject my decision before 17 May 2022.

Asma Begum
Ombudsman