

The complaint

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

What happened

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

Mr H has also complained about breach of contract, in that he says the solar panel installation has caused damage to the roof, which has led to water ingress causing internal damage at his property. He says that damage is ongoing and getting worse.

Mr H says the weight of the solar panel installation, which included heavy fence posts and paving stones used to weigh down the solar panels, is too heavy and has caused the roof to sag. He initially complained to the installer which agreed to remove some of the paving slabs to reduce the weight of the installation and do some repairs to the roof in an attempt to reseal it to stop the water ingress. However, this has not resolved the problem. The installer has since gone into liquidation.

Mr H's complaint was considered by one of our adjudicators. They thought that the benefits of the panels were mis-represented to Mr H and that the installation had caused damage to the roof. They said that fair redress would be for the loan to be restructured 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 also said that Creation should pay for the roof to be inspected and any damage caused by the installation to be repaired.

Creation didn't agree – in particular with regards inspection and repair of the roof. Creation said the problem was not reported to the installer within six months, so the onus is on Mr H to provide evidence that the installation caused the damage. Our adjudicator felt there was sufficient evidence to indicate that Mr H had done this, and that Creation should bear the costs of any further inspections.

As an agreement couldn't be reached, I've been asked to make a decision.

I issued a provisional decision saying that, subject to any further information and comments I received, I was planning to uphold the complaint along similar lines to our adjudicator's assessment.

Creation did not respond to my provisional decision within the given deadline. Mr H replied to say that when some of the paving slabs were removed and some repairs were done to the

roof, the installer simply put new felt over the old and failed to notice the wood underneath was damaged.

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.

Because there was no significant new information for me to consider, this final decision is in line with my provisional decision.

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. But I have considered Section 75 of the Consumer Credit Act 1974 and the relevant provisions of the Consumer Rights Act 2015.

The Consumer Rights Act says that a consumer can expect a service (such as installation of solar panels) to be carried out with reasonable care and skill. I think it is fair and reasonable to expect solar panels to be installed without causing damage to a property. So, if in this case the installation has caused such problems the installer (and therefore Creation) would be responsible for putting this right by repairing the damage and reinstalling the solar panels properly.

Having carefully considered everything provided, for the same reasons as those explained by the adjudicator, I uphold this complaint. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mr H was not given clear information to demonstrate that the solar panels would not be self-funding and would equate to an additional cost for him.

With regards the leak from the roof, I'm satisfied that Mr H is likely to have contacted the installer within six months of the installation to inform it of the problem. The installer seems to have inspected the roof and agreed to remove some of the paving stones to reduce the weight of the solar panel installation and do some additional work in an attempt to seal the roof and stop further water ingress.

The evidence indicates the installer did this as a gesture of goodwill – so it did not explicitly accept that the leak was caused by the installation. But it seems from the evidence available that the installation was likely the cause – given there is nothing to suggest pre-existing issues with the roof, and the water ingress was first noticed within six months of the solar panel installation.

I'm also mindful that there is no evidence that a suitable assessment of the roof was carried out prior to installation to ensure the roof could bear the weight of the installation. So, I can understand why Mr H has significant concerns about the safety of his property. Especially as he says he has spoken to a structural engineer who has suggested the solar panels should never have been installed on the roof.

In the circumstances I think there has been a breach of contract, in that it is likely that the installation was not carried out with reasonable care and skill. So, I think it would be fair and reasonable for Creation to put things right. I set out below how it should do so.

Putting things right

Misrepresentation

Creation should put things right by recalculating the original loan based on the known and assumed savings and income to Mr H from the solar panels over a ten-year period so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

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

If the calculation shows there is a loss, then where the loan is ongoing, I require Creation to restructure Mr H's loan. It should recalculate the loan to put Mr H 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 H 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 he 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 he pays a new monthly payment until the end of the loan term,
- C. the overpayments are returned to Mr H and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr H and he pays a new monthly payment until the end of the loan term.

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

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

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

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

Breach of contract

Creation should pay for a relevant independent expert (or experts) to inspect the roof and solar panel installation to assess whether or not the solar panel installation has caused damage to the roof. And if it has, to prepare a schedule of works to set out what Creation must do to repair that damage.

If Mr H accepts this decision, then both Creation and Mr H will be bound by the independent expert's opinion.

This means that if the independent expert says the solar panel installation did cause damage to the roof, then Creation must remedy this – by carrying out the necessary work to fix the roof including (if necessary) safely removing and reinstalling the solar panels. If the independent expert says the damage to the roof also allowed water ingress and that this caused damage internally then Creation must also carry out repairs to fix this.

However, if the independent expert concludes that the solar panel installation did not cause damage to the roof then Creation will not need to take any further action. If the independent expert concludes there was damage caused to the roof by the installation, but this did not cause water ingress, then Creation will only need to repair the roof, not the internal damage.

I'm satisfied that there was sufficient information available at the time that Mr H first contacted Creation that means the claim should have been upheld. I direct that Creation should pay £250 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I uphold this complaint. Creation Consumer Finance Ltd should put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 August 2022.

Phillip Lai-Fang
Ombudsman