

## **The complaint**

Miss K has complained about Creation Consumer Finance Ltd's ('Creation') response to a claim she made under Section 75 ('s.75') of the Consumer Credit Act 1974 (the 'CCA') and in relation to allegations of an unfair relationship taking in to account Section 140A ('s.140A') of the CCA.

## **What happened**

In April 2015, Miss K bought a solar panel system ('the system'), from a company I'll call "G", using a ten-year fixed sum loan from Creation.

In January 2022, Miss K complained to Creation through a Claims Management Company ("CMC") that she was told by G that the energy savings and income from the system would cover the cost of the loan so she would be no worse off each month. She says that hasn't happened and she's suffered a financial loss. She also said that what happened at the time of the sale created an unfair relationship between her and Creation.

Creation responded to say that under the Dispute Resolution (DISP) Rules, which set out how it should deal with complaints, it was able to dismiss the complaint because it was made too late.

Unhappy with Creation's response, Miss K referred her complaint to the Financial Ombudsman Service. Creation told us that in addition to what it had told Miss K, the s.75 claim was made too late due to the provisions in the Limitation Act ("LA").

Our Investigator considered Miss K's complaint, they ultimately thought that:

- Given the s.75 claim was more likely to be time barred under the LA, Creation's answer seemed fair.
- The s.140A complaint was one we could look at under our rules and that it had been referred in time.
- Misrepresentations could be considered under s.140A.
- A court would likely find an unfair relationship had been created between Miss K and Creation.

Our Investigator recommended that Miss K keep the system and Creation make sure that she paid no more for it than the benefits it would provide over ten years.

Miss K accepted the investigator's view. Creation didn't respond. So, the case was progressed to the next stage of our process, an Ombudsman's 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.

I've decided to uphold this complaint.

## **My findings on jurisdiction**

I'm satisfied I have jurisdiction to consider Miss K's complaint, both in respect of the refusal by Creation to accept and pay her s.75 claim and the allegations of an unfair relationship under s.140A.

### The s.75 complaint

The event complained of here is Creation's alleged wrongful rejection of Miss K's s.75 claim on 15 February 2022, this relates to a regulated activity under our compulsory jurisdiction. Miss K brought her complaint about this to the ombudsman service on 15 June 2022. So, her complaint in relation to the s.75 claim was brought in time for the purposes of our jurisdiction.

### The unfair relationship under s.140A complaint

The event complained of here is Creation's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Miss K. Here the relationship ended on 19 April 2019, and the complaint was referred to the ombudsman service on 15 June 2022. So, the complaint has been brought within six years of the relationship ending and is in time for the purposes of our jurisdiction.

## **My findings on the merits of the complaint**

### The s.75 complaint

The law imposes a six-year limitation period on claims for misrepresentation and breach of contract, after which they become time barred.

In this case the alleged misrepresentation and cause of action arose when an agreement was entered into on 23 April 2015. Miss K brought her s.75 claim to Creation on 28 January 2022. That is more than six years after she entered into an agreement with Creation. Given this, I think it was fair and reasonable for Creation to have not accepted the s.75 claim. So, I do not uphold this aspect of the complaint.

### The unfair relationship under s.140A complaint

When considering whether representations and contractual promises by G can be considered under s.140A I've looked at the court's approach to s.140A.

In *Scotland & Reast v British Credit Trust* [2014] EWCA Civ 790 the Court of Appeal said a court must consider the whole relationship between the creditor and the debtor arising out of the credit agreement and whether it is unfair, including having regard to anything done (or not done) by or on behalf of the creditor before the making of the agreement. A misrepresentation by the creditor or a false or misleading presentation are relevant and important aspects of a transaction.

Section 56 ('s.56') of the CCA has the effect of deeming G to be the agent of Creation in any antecedent negotiations.

Taking this into account, I consider it would be fair and reasonable in all the circumstances for me to consider as part of the complaint about an alleged unfair relationship those negotiations and arrangements by G for which Creation were responsible under s.56 when considering whether it is likely Creation had acted fairly and reasonably towards Miss K.

But in doing so, I should take into account all the circumstances and consider whether a Court would likely find the relationship with Creation was unfair under s.140A.

### What happened

Miss K has said that she was told by G's representative that the energy savings and income from the system would cover the cost of the loan so she would be no worse off each month.

Miss K has said she was cold called by G about the system, and I haven't seen any evidence she had any prior interest in purchasing solar panels.

I've looked at the documents provided by Miss K to see if there was anything contained within them that made it clear that the solar panel system wouldn't be self-funding. But there is not. The credit agreement set out what Miss K had agreed to pay. But there is nothing showing the expected income and savings that the system was expected to provide. So, Miss K was reliant on what the salesperson told her about the benefits.

I'm mindful that around the time of sale G had been found to be in breach of the Renewable Energy Consumer Code ("RECC") by its Non-Compliance Panel, including in relation to misleading customers and providing inaccurate information about the benefits of solar panels. Those issues were not rectified, and G confirmed to be in full compliance with the code, until sometime after Miss K's purchase.

Creation hasn't provided any compelling evidence to dispute Miss K's recollection of what happened. It referred to a satisfaction note but has not provided a copy of this despite me asking it to. In any case that was only provided after the installation was completed, so would not have influenced Miss K's decision to buy.

So, based on the evidence available to me, despite having no prior interest in solar panels, Miss K agreed to an interest-bearing loan, with a monthly repayment of £98.95, payable for ten years. Given her lack of prior interest and the financial burden she took on I find Miss K's account of what she was told by G to be plausible and persuasive and most likely is an accurate reflection of what happened.

The system hasn't provided the benefits Miss K was told to expect. So, what she was told was not true. I think G's representative ought reasonably to have been aware that Miss K's system would not have produced sufficient benefits to cover her monthly loan repayments.

Considering Miss K's account about what she was told, the documentation she was shown at the time of the sale, and that Creation hasn't disputed this, I think it likely G gave Miss K a false and misleading impression of the self-funding nature of the solar panel system.

I think that G's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Miss K was expected to receive by agreeing to the installation of the system. And that G's assurances in this regard likely amounted to a contractual promise that the solar panel system would have the capacity to fund the loan repayments. But, even if they did not have that effect, they nonetheless represented the basis upon which Miss K went into the transaction. Either way, I think G's assurances were seriously misleading and false, undermining the purpose of the transaction from Miss K's point of view.

Would a court be likely to make a finding of unfairness under s.140A?

Where Creation is to be treated as responsible for G's negotiations with Miss K in respect of its misleading and false assurances as to the self-funding nature of the solar panel system, I'm persuaded a court would likely conclude that because of this the relationship between Miss K and Creation was unfair.

Because of this shortfall between her costs and the actual benefits, each month she has had to pay more than she expected to cover the difference between her solar benefits and the cost of the loan. So, clearly Creation has benefitted from the interest paid on a loan she would not otherwise have taken out.

### **Putting things right**

I consider that fair compensation should aim to remedy the unfairness of Miss K and Creation's relationship arising out of G's misleading and false assurances as to the self-funding nature of the solar panel system. Creation should repay Miss K a sum that corresponds to the outcome she could reasonably have expected as a result of G's assurances. That is, that Miss K's loan repayments should amount to no more than the financial benefits she received for the duration of the loan agreement.

Therefore, to resolve the complaint, Creation should recalculate the credit agreement based on the known and assumed savings and income Miss K received from the system over the 10-year term of the loan, so Miss K pays no more than that. To do that, I think it's important to consider the benefit Miss K received by way of FIT payments as well as through energy savings. Miss K will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to Creation.

Creation should also be aware that whether my determination constitutes a money award or direction (or a combination), what I decide is fair compensation need not be what a court would award or order. This reflects the nature of the ombudsman service's scheme as one which is intended to be fair, quick, and informal.

Finally, I consider that Creation's failure to fully deal with Mr H's complaint in a reasonable timeframe caused Mr H some degree of trouble and upset. In recognition of this Creation should also pay Mr H additional compensation as set out below.

### **My final decision**

For the reasons I have explained I uphold Miss K's complaint. To put things right Creation Consumer Finance Ltd must:

- Calculate the total payments (loan repayments, deposit, fees and charges) Miss K has made towards the solar panel system up until the date of settlement – A
- Use Miss K's bills and FIT statements, to work out the benefits she received up until the date of settlement\* – B
- Use B to recalculate what Miss K should have paid each month towards the loan over that period and calculate the difference, between what she actually paid (A), and what she should have paid, applying 8% simple interest per year to any overpayment from the date of payment until the date of settlement\*\* – C
- Reimburse C to Miss K

- Use Miss K's bills and FIT statements, to work out the benefits she will receive for the period between the settlement of her complaint and the end of the original loan term\*  
– D
- Rework the loan so that the remaining balance is D and recalculate the remaining monthly payments equally over the remaining term of the loan.
- Pay Miss K £100 compensation for the trouble and upset caused.

\*Where Miss K has not been able to provide all the details of her meter readings, electricity bills and/or FIT benefits, Creation should complete the calculation using known and reasonably assumed benefits.

\*\* If Creation Consumer Finance Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss K how much it's taken off. It should also give Miss K a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 12 July 2024.

Phillip Lai-Fang  
**Ombudsman**