

## **The complaint**

Mr H has complained about Creation Consumer Finance Ltd ('Creation')'s response to a claim he 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 2014, Mr H bought a solar panel system ('the system') from a company I'll call "G" using a ten-year fixed sum loan from Creation.

In November 2021, Mr H complained to Creation through a claims management company. He said that he was told by G that the income and savings from the system would cover the loan repayments, so he would be no worse off each month. However, that hasn't happened, and he's suffered a financial loss. He also believed that what happened created an unfair relationship between him and Creation.

Creation responded to the complaint in its final response, it dismissed the complaint saying it had been brought too late under the Dispute Resolution (DISP) Rules, which set out how financial businesses must deal with complaints.

Unhappy with Creation's response, Mr H referred his complaint to the Financial Ombudsman Service.

When sending us its file, Creation added that Mr H had brought his claim more than six years after the cause of action occurred so was also out of time under the Limitation Act ('LA').

Our Investigator considered Mr H's complaint and 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 Mr H and Creation.

Our Investigator recommended that Mr H keep the system and Creation take into account what Mr H had paid so far, along with the benefits he received, making sure the system was effectively self-funding within the original loan term.

Neither Mr H nor Creation provided any further comments or information in response to our investigator's assessment. So, I've been asked to make a decision on the complaint.

## **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 and I'll explain why.

## **My findings on jurisdiction**

I'm satisfied I have jurisdiction to consider Mr H's complaint, both in respect of the refusal by Creation to accept and pay his 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 Mr H's s.75 claim on 13 November 2021, this relates to a regulated activity under our compulsory jurisdiction. Mr H brought his complaint about this to the ombudsman service on 17 January 2022. So, his 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 Mr H. Here the relationship was ongoing at the time it was referred to the ombudsman service on 17 January 2022, so the complaint has been brought in time for the purposes of our jurisdiction.

## **My findings on the merits 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 Mr H.

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

Mr H has said that he was told by G's representative that the income and savings from the system would cover the loan repayments, so he would be no worse off each month. I haven't seen any evidence that he had any prior interest in purchasing solar panels.

I've looked at the sales documents provided, to see if there was anything contained within them that made it clear that the system wouldn't be self-funding. The order form shows the system would have 12 panels and cost £6,995.00. The credit agreement makes clear what Mr H was agreeing to pay, including interest – a total of £10,851.20 over 120 monthly repayments of £90.42 each. But none of the documents provide information about the income and savings the system would generate. As such, Mr H would've relied on what he was told verbally by G's representative. And his recollection of this is the only evidence of that. Creation hasn't provided evidence to dispute Mr H's recollection.

So, it appears that, with no prior interest in solar panels, Mr H agreed to an interest-bearing loan with a monthly repayment of around £90, payable for ten years. Given his lack of prior interest and the financial burden he took on I find Mr H's account of what he was told by G to be credible and persuasive. The loan is a costly long-term commitment, and I'm satisfied he would not have seen this purchase as appealing had he not been given the assurances he's said he received from G.

For the solar panels to pay for themselves, they would need to produce combined savings and income of around £1,085 per year. I have not seen anything to indicate Mr H's system was not performing as expected, but he says his system has not produced this.

I think the G's representative must reasonably have been aware that Mr H's system would not have produced benefits at this level. Looking at the MCS certificate, which shows the expected electricity generation of the system, and bearing in mind the relevant unit rates at the time, it does not appear that the system would ever have produced sufficient income and savings to cover the monthly loan repayments from the start. In the first year the benefits may have been expected to amount to about £600. So, G's statements about the benefits of the system covering the monthly loan repayments were not true.

Considering all of this, I think it likely G gave Mr H a false and misleading impression of the self-funding nature of the solar panel system.

I consider G's misleading information went to an important aspect of the transaction for the system, namely the financial benefits which Mr H could expect to receive by agreeing to the installation of the system. I think 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 Mr H entered into the transaction. Either way, I think G's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr H'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 Mr H 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 Mr H and Creation was unfair.

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

### The s.75 complaint

Given my above conclusions and bearing in mind the purpose of my decision is to provide a fair outcome quickly with minimal formality, I don't think I need to provide a detailed analysis of Miss B's s.75 complaint. Furthermore, this doesn't stop me from reaching a fair outcome in the circumstances.

### **Putting things right**

In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Mr H 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 Mr H a sum that corresponds to the outcome he could reasonably have expected as a result of G's assurances. That is, that Mr H's loan repayments should amount to no more than the financial benefits he received for the duration of the loan agreement.

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.

Therefore, to resolve the complaint, Creation should recalculate the agreement based on the known and assumed savings and income Mr H received from the system over the ten-year term of the loan, so Mr H pays no more than that. To do that, I think it's important to consider the benefit Mr H received by way of FIT payments as well as through energy savings.

Mr H will need to provide to Creation up to date details of his meter reading and, where available, FIT statements and electricity bills. But Creation can use reasonable assumptions for periods where evidence of the actual benefits is not available.

Finally, I think that Creation's failure to consider the fairness of its relationship with Mr H when responding to him caused him 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 Mr H's complaint. To put things right Creation Consumer Finance Ltd must:

- Calculate the total payments Mr H has made towards the solar panel system up until the date of settlement – A
- Use Mr H's bills and FIT statements, to work out the benefits he received up until the end of the loan term\* – B
- Use B to recalculate what Mr H should have paid each month towards the loan over that period and calculate the difference, between what he actually paid (A), and what he should have paid, applying 8% simple interest to any overpayment from the date of payment until the date of settlement\*\* – C
- Reimburse C to Mr H
- Pay Mr H £100 additional compensation

\*Where Mr H has not been able to provide all the details of his meter readings, electricity bills and/or FIT benefits, Creation Consumer Finance Ltd 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 Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 July 2024.

Phillip Lai-Fang  
**Ombudsman**