DRN-4000486

The complaint

Mr V has complained that Creation Consumer Finance Ltd didn't respond to his claim against it under Section 75 of the Consumer Credit Act 1974.

Mr V is represented by a claims management company ("the CMC").

What happened

Mr V 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 allegedly misleading Mr V into believing that the panels would be self-funding, which he says they weren't.

When contacting us, the CMC informed us that the solar panels had stopped working around November 2020, and that Creation had been informed of this in July 2021, about four months after the claim had been made. The CMC asked that, given Feed-In Tariff ("FIT") payments were no longer being received due to no electricity being generated, Creation take account of this in any settlement.

Creation took some time to respond to the claim, so Mr V referred a complaint about this to the Financial Ombudsman Service. Creation later told us that it was making an offer on a without prejudice basis. The offer was to adjust Mr V's loan so he would pay no more for the system than the benefit it was expected to provide over the ten-year loan term. This was based on actual performance in the past and reasonable assumptions about future performance. The offer did not mention any adjustment for the lack of FIT payments since the system stopped working.

One of our adjudicators looked at what had happened. They thought that the benefits of the panels were mis-represented to Mr V, and 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 matched the offer that Creation had made. But our adjudicator asked Creation to update its calculations, since they were made some time ago.

Our adjudicator also thought that the lack of FIT payments since the system had stopped working should be taken into account in Creation's calculation of settlement. Creation did not respond to our adjudicator within a reasonable time, so I was asked to make a decision.

I issued a provisional decision explaining that I thought Creation's offer was fair and reasonable, subject to it updating it to the date of settlement. But I didn't think that Creation should take into account the lack of benefits from when the system stopped working, since Mr V had not taken reasonable steps to establish what the problem was or have it rectified, which could've returned the system to full working order.

Creation responded to say it accepted my provisional decision and had nothing further to add.

The CMC replied to say it agreed with my findings on the misrepresentation and how to put that right. But it disagreed with regards the system having stopped working and that being taken account in the calculation of settlement.

The CMC said that Mr V wasn't in a position to have the system repaired given he was already suffering a loss on a monthly basis due to the misrepresentation. The CMC said that the system stopping working within the ten-year loan term was a breach of contract by the supplier. It said this indicated the system wasn't of satisfactory quality, since a reasonable person would expect it to continue working for the full ten years. The CMC said that normally a lender would offer to inspect the system in these circumstances, which it feels would be a reasonable resolution.

I've thought about the CMC's additional comments, but I've not been persuaded to change my mind. So, this final decision is in line with 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.

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.

I see no reason to make a finding on whether the system was misrepresented to Mr V by the supplier as being self-funding. Creation has made an offer of settlement which is in line with our approach to cases where there was a misrepresentation. So, my making a finding on that would not change the outcome.

However, I disagree with the adjudicator's suggestion that the lack of benefits since November 2020 should be taken into account in the settlement calculations.

The claim I'm looking at here is about the alleged misrepresentation, how that should be put right, and whether or not the lack of benefits since the system stopped working should be taken into account in the calculation of settlement. I am not making a finding on whether or not Creation should inspect the system or whether there was a breach of contract by the supplier. I think that should be a separate claim, since it was not a part of the original claim that Creation was asked to respond to.

I can see that the CMC did ask Creation on 29 July 2021 via email if it "would be prepare[d] to cover the cost for the repairs of the solar panel system and the roof". That was itself about eight months after the system stopped working. Creation doesn't appear to have responded to that query. But it appears that Mr V has taken no action to follow that up with Creation or to ensure the system was inspected to establish what the problem was and who was responsible for repairing it.

It appears to me that the lost benefits from the system since it stopped working could've been avoided, or at least mitigated, if Mr V had taken action as soon as he realised the system had stopped working and followed this up to get it resolved as soon as possible. As things stand there is no evidence to show if Creation has any liability for the lost benefits since the system stopped working.

So, at this stage I don't think it would be fair and reasonable to expect Creation to compensate Mr V for those lost benefits by taking them into account in the settlement. My findings on this point should not prevent Mr V from pursuing the matter further with Creation,

from getting an expert report to establish what the problem is and whether Creation has any liability, or from making a complaint about Creation's lack of response to the CMC's email of 29 July 2021.

Having carefully considered everything provided, I uphold this complaint. In brief, that is because Creation failed to respond to the misrepresentation claim with its offer within a reasonable time.

However, Creation's offer seems to be fair and reasonable in relation to the alleged misrepresentation and in line with what I would have awarded, subject to it being updated to the date of settlement. For completeness, I have set out below what Creation must do to put things right.

Creation did not respond to the claim within a reasonable time. And it did not respond at all in respect of the system having stopped working despite the CMC's request for it to take account of this in its settlement. I think that caused some unnecessary inconvenience to Mr V, necessitating the complaint being referred to the Financial Ombudsman.

Putting things right

Creation should put things right by recalculating the original loan based on the known and assumed savings and income to Mr V 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.

Creation does not need to adjust its calculation to reflect that the system stopped working in November 2020. Creation should use reasonable assumptions for the benefits the system would've generated from that point as if it had kept working.

The calculation will show that Mr V is paying (or has paid) more than he should have, so Creation needs to reimburse him.

Where the loan is ongoing, Creation should restructure Mr V's loan as set out above. 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 Creation to add 8% simple interest per year from the date of the overpayment to the date of settlement.

Mr V should 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 V, and he continues to make his current monthly payment resulting in his loan finishing early, or
D. the overpayments are returned to Mr V, and he pays a new monthly payment until the end of the loan term.

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

If Mr V 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 per year.

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

1. Refund the extra Mr V paid each month with the Creation loan.
2. Add simple interest from the date of each payment until Mr V receives his refund.
3. Refund the extra Mr V paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr V receives his refund.
5. Pay Mr V 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.

Creation should also pay £200 compensation to Mr V 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 set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 31 March 2023.

Phillip Lai-Fang
Ombudsman