

The complaint

Mr H has complained about the way Mitsubishi HC Capital UK Plc (“MHCC”) responded to claims he’d made in relation to misrepresentation, breach of contract, and an alleged unfair relationship taking into account section 140A (“s.140A”) of the Consumer Credit Act 1974 (the “CCA”).

Mr H has been represented in bringing his complaint but, to keep things simple, I’ll refer to Mr H throughout.

What happened

In November 2013 Mr H entered into a fixed sum loan agreement with MHCC to pay for a £8,438 solar panel system (“the system”) from a supplier I’ll call “S”. The agreement was for 10 years, and Mr H paid a £3,438 deposit. He was also due to pay 120 instalments of £59.70. The total amount payable under the agreement was £10,602. Interest was £2,164.

In February 2022 Mr H put in a claim with MHCC explaining he thought the system was mis-sold. He said S told him he’d effectively be paid for the electricity the system generated through the government’s Feed in Tariff (FIT) payments and that the system would be self-funding within the loan term. He said S told him his energy bills would go down; he’d receive a guaranteed income for 20 years; he’d earn up to 10% annually tax free; his property value would increase; and the system was maintenance free with a 25-year life expectancy. He said the system was misrepresented and believed statements and several other actions at the time of the sale created an unfair relationship between himself and MHCC.

MHCC sent a response in March 2022 saying it wasn’t liable for a like claim under section 75 (“s.75”) due to the time that’d passed. It said there was no evidence it didn’t comply with all relevant law, and that the documents provided clearly set out the cost and full financial information. MHCC said there was no suggestion Mr H didn’t understand what he was signing up for and that he’d benefitted from the FIT payments. It also said he’d continue to benefit from FIT payments for a further 11 years and energy savings for the full lifespan of the system (usually 25 years). It said it didn’t consider the relationship unfair. MHCC also set out no commission had been paid and that its decision to lend was responsible.

Mr H decided to refer his complaint to the Financial Ombudsman in April 2022.

MHCC sent a final response in March 2023 reiterating it didn’t think it had liability for a like claim under s.75 because it had been brought well over six years after the alleged cause of action.

One of our investigators looked into things and said they thought the s.140A complaint had been brought within our time limits. They said they could consider the alleged misrepresentations and whether they created an unfair relationship between Mr H and MHCC. They said the documentation from the point of sale was limited and that they were unable to locate any information about S from around the time of the sale about how it marketed the system. They said they'd asked Mr H further questions about the circumstances of the sale. But having considered everything, they didn't think they'd seen enough to say S misrepresented the system. Our investigator said, on balance, they didn't think MHCC needed to take any action, and they didn't uphold the complaint.

Mr H said he didn't agree with the outcome, so the complaint has been passed to me to decide.

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.

My findings on jurisdiction

I'm satisfied I have jurisdiction to consider Mr H's complaint, both in respect of the refusal by MHCC to accept and pay a s.75 claim and the allegations of an unfair relationship under s.140A.

The s.75 complaint

The event complained of here is MHCC's alleged wrongful rejection of Mr H's s.75 claim. This relates to a regulated activity under our compulsory jurisdiction. Mr H brought his complaint about this to the ombudsman service in April 2022. MHCC sent an initial response to the claim in March 2022, and a final response letter in March 2023. 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 MHCC's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mr H. Here, I understand the relationship was ongoing when the claim and complaint was raised, so the complaint has been brought in time for the purposes of our jurisdiction.

Merits

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 alleged breach cause of action arose when an agreement was entered into in November 2013. Mr H brought his s.75 claim to MHCC in February 2022. That is more than six years after he entered into an agreement with it. Given this I think it was fair and reasonable for MHCC 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 S 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 S to be the agent of MHCC 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 S for which MHCC was responsible under s.56 when considering whether it is likely MHCC 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 MHCC was unfair under s.140A.

What happened?

Mr H says he was verbally misled that the system would effectively pay for itself. So I've taken account of what Mr H says he was told. I've also reviewed the documentation that I've been supplied.

I note the fixed sum loan agreement sets out the amount being borrowed; the interest charged; the total amount payable; the term; and the contractual monthly loan repayments. I think this was set out clearly enough for Mr H to be able to understand what was required to be repaid towards the agreement.

We've also been supplied other documentation from the point of sale including a satisfaction note; deposit registration form; a confirmation certificate setting out the key components of the system and the estimated system performance in kWh; an energy performance certificate for the property; pre-contract information about the agreement; a price promise from S for the products; an energy efficiency declaration; and page 5 of a document setting out terms relating to system performance, energy management, and energy conservation. It's curious we've only been supplied page 5 of that document, but Mr H has said he's supplied what he was given. There was nothing within the documents Mr H supplied that sets out the estimated financial benefits of having the system. Based on what I've seen from the documents, there wasn't an easy way for Mr H to compare the costs against the benefits.

As well as requesting all the point of sale documents our investigator asked Mr H to talk through the sales process, and for details of whether Mr H ever raised any issues with S and, if not, why. They also wanted to know what Mr H's circumstances were at the time of the sale. Mr H responded to reiterate he supplied all the information he had. He said he did try to contact S about a year after fitting due to a loose panel but couldn't get through. He said the sale started with a call from S explaining the benefits of the system and that he'd receive his money back within five years. He said he wanted to pay cash, but S told him the deal would be arranged through MHCC and that interest would be covered by the panels.

Mr H said S told him he needed to be quick or the benefits from FIT would drop dramatically. He also said he had savings but was willing to use some towards the costs of electricity in years to come. He said the whole experience didn't come near to the expectations he was promised. He said he even helped S promote the system for no charge.

I'm mindful that some of the information we've been given seems slightly conflicting. Mr H said in his original complaint letter that S effectively sold the system as being self-funding within the loan term. He's later said he was told it would be paid within 5 years. And he's also said S told him the interest for the agreement would be covered by the system.

Mr H hasn't offered an explanation for why it took nearly 9 years to raise his concerns. If he was told the system wouldn't been paid within 5, or even if he was told it would be self-funding within the loan term, it's not clear why he waited so long. There might be a reasonable explanation, but Mr H hasn't explained why.

I've also thought about other points Mr H raised in his original complaint form. He raised a concern about commission, but I understand none was paid. He also raised concerns about MHCC's creditworthiness assessment and that he wasn't supplied pre-contract information or given enough time to consider the agreement. He also said the sale was pressured. Mr H didn't offer any further comments or evidence in response to MHCC's answer, for example, to indicate he wasn't able to sustainably repay £59.70 monthly. His later testimony seemed to indicate he had savings he was willing to use to help with the cost of electricity. I don't find there's enough evidence to determine MHCC lent irresponsibly. I'm conscious he's supplied us some pre-contract information. It's difficult to know whether he was pressured into signing the agreement. But I believe he was given the standard cooling off period because it was set out on the front of the agreement. So I don't think there's grounds to say MHCC's response to these other complaint points was unfair.

Moreover, Mr H hasn't offered any substantive responses to our investigator's assessment that didn't uphold the complaint. He's said he disagreed with the outcome, but not offered further explanation, evidence, or reasoning why. I've also not been able to find any other compelling evidence from around the time of the sale such as marketing material that supports Mr H's allegations.

All things considered, I'd like to have been more certain S misled Mr H about the benefits of the system, or that something else went wrong at the point of sale. On balance, I don't think there's sufficient grounds to uphold the complaint or make the findings that MHCC dealt with the claim or complaint unfairly. I'm therefore not going to make any directions.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 October 2024.

Simon Wingfield
Ombudsman