

## **The complaint**

Mrs G has complained about Mitsubishi HC Capital UK Plc trading as Hitachi Capital Consumer Finance's ('Mitsubishi') 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 into account Section 140A ('s.140A') of the CCA.

## **What happened**

In January 2015, Mrs G bought a solar panel system ('the system') from a company, which I'll call "F", using a ten-year fixed sum loan from Mitsubishi.

In February 2021, Mrs G complained to Mitsubishi. She said that she was told by F that the system would pay for itself in that its benefits would exceed the loan repayments. However, that hasn't happened, and she's suffered a financial loss as a result. She felt that was unfair.

Mitsubishi responded to the complaint in its final response, it considered Mrs G had brought her claim more than six years after the cause of action occurred under the Limitation Act ('LA').

Unhappy with Mitsubishi's response, Mrs G referred her complaint to our service.

Our Investigator considered Mrs G's complaint. They ultimately thought that:

- Given the s.75 claim was likely to be time barred under the LA, Mitsubishi's answer seemed fair in that regard.
- Considering s.140A, under our rules we can look at a complaint about Mrs G's relationship with Mitsubishi being potentially unfair, and that complaint had been referred in time.
- Misrepresentations could be considered under s.140A.
- A court would likely find an unfair relationship had been created between Mrs G and Mitsubishi.

Our Investigator recommended that Mrs G keep the system, and Mitsubishi take into account what Mrs G had paid so far, along with the benefits she received, making sure the system was effectively self-funding within the loan term.

Mitsubishi responded to say that it thought the complaint was outside of our jurisdiction due to it not being referred to us in time. And that if we disagreed with that and upheld the complaint, the redress should follow the approach in a court case known as "Hodgson". 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.

## **My findings on jurisdiction**

I'm satisfied I have jurisdiction to consider Mrs G's complaint, both in respect of the refusal by Mitsubishi to accept and pay her s.75 claim and the suggestion of an unfair relationship under s.140A.

#### The s.75 complaint

The event complained of here is Mitsubishi's alleged wrongful rejection of Mrs G's s.75 claim on 15 April 2021, this relates to a regulated activity under our compulsory jurisdiction. Mrs G brought her complaint about this to the Financial Ombudsman Service on 12 September 2021. 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

It seems to me that Mr B's complaint is, at its heart, about the unfairness of her relationship with Mitsubishi, which was entered in to as a result of alleged misleading representations and contractual promises. So, I'm satisfied his concerns include a complaint about Mitsubishi's participation and perpetuation of an unfair relationship.

The event complained of here is Mitsubishi's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mrs G. Here the relationship was ongoing at the time it was referred to the ombudsman service on 12 September 2021, so the complaint has been brought 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 alleged breach cause of action arose when an agreement was entered into on 5 February 2015. Mrs G brought her s.75 claim to Mitsubishi on 7 February 2021. That is more than six years after she entered into the agreement. Given this, I think it was fair and reasonable for Mitsubishi 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 F 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 F to be the agent of Mitsubishi 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 F for which Mitsubishi were responsible under s.56 when considering whether it is likely Mitsubishi had acted fairly and reasonably towards Mrs G.

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

### What happened

Mrs G has said that she was told by F's representative that the system would pay for itself in that its benefits would exceed the loan repayments. I haven't seen any evidence she had any prior interest in purchasing solar panels.

I've looked at the documents provided by Mrs G to see if there was anything contained within them that made it clear that the solar panel system wouldn't be self-funding.

The sales documents show a breakdown of the anticipated annual electricity bill savings from the system. This started at £553.52 in the first year, increasing to £4,767.34 in year 20, for a total saving in that time of £39,882.47.

There is further information about the benefits that say the total return over 20 years (presumably including income from the Feed-In Tariff) would be £55,319.45. This would lead to a full return on investment in year six, and a yearly return on investment of 12.78%. This was above a graph entitled "payback", which showed the cost of the system would be covered by the benefits in about six years.

Given what is shown in the sales documents, I think this would reinforce what Mrs G recalls being told about the benefits covering the loan repayments, since the loan was for ten years, but the documents suggest she'd achieve a full return on her investment in just six years.

Mitsubishi hasn't provided evidence to dispute what Mrs G has said happened. Yet with no prior interest Mrs G left the meeting having agreed to an interest-bearing loan, with a monthly repayment of around £1,430, payable for ten years. Given her lack of prior interest and the financial burden she took on I find Mrs G's account of what she was told by F to be credible and persuasive. The loan is a costly long-term commitment, and I can't see why she would have seen this purchase appealing had she not been given the reassurances she's said she received from F.

For the solar panels to pay for themselves, they would need to produce combined savings and FIT income of around £1,430 per year. I have not seen anything to indicate Mrs G's system was not performing as expected in terms of electricity generation, but her system has not produced this benefit. I think F's representative would have known that Mrs G's system would not produce enough benefits to cover the overall cost of the system in the timescales stated verbally to her. Using reasonable assumptions, a fairer estimate of how long it would take for the benefits to cover the overall loan repayments of more than £13,000 would be around fourteen years.

Considering the evidence available to me, I think it likely that F gave Mrs G a false and misleading impression of the self-funding nature of the solar panel system.

I consider F's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mrs G was expected to receive by agreeing to the installation of the system. I consider that F'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 Mrs G went into the transaction. Either way, I think F's assurances were

seriously misleading and false, undermining the purpose of the transaction from Mrs G's point of view.

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

Where Mitsubishi is to be treated as responsible for F's negotiations with Mrs G 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 Mrs G and Mitsubishi was unfair.

Because of this shortfall between Mrs G's 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 Mitsubishi has benefitted from the interest paid on a loan she would not otherwise have taken out.

### **Fair compensation**

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

Mitsubishi told us that it considers our approach to redress should be in accordance with the Court's decision in *Hodgson v Mitsubishi Consumer Finance Limited [2021] EWHC 2167 (Comm)* ('Hodgson').

I have considered the Hodgson judgment, but this doesn't persuade me I should adopt a different approach to fair compensation. Hodgson concerned a legal claim for damages for misrepresentation, whereas I'm considering fair redress for a complaint where I consider it likely the supplier made a contractual promise regarding the self-funding nature of the solar panel system. And even if I am wrong about that, I am satisfied the assurances were such that fair compensation should be based on Mrs G's expectation of what she would receive. I consider Mrs G has lost out and has suffered unfairness in her relationship with Mitsubishi, to the extent that her loan repayments to Mitsubishi exceed the benefits from the solar panels. On that basis, I believe my determination results in fair compensation for Mrs G.

Mitsubishi 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, Mitsubishi should recalculate the agreement based on the known and assumed savings and income Mrs G received from the system over the ten-year term of the loan, so Mrs G pays no more than that. To do that, I think it's important to consider the benefit Mrs G received by way of FIT payments as well as through energy savings. Mrs G will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to Mitsubishi. But Mitsubishi can use reasonable assumptions for periods where evidence of the actual benefits is not available.

Finally, I consider that Mitsubishi's failure to consider the fairness of its relationship with Mrs G when responding to her caused her some degree of trouble and upset. In recognition of this Mitsubishi should also pay Mrs G additional compensation as set out below.

## **My final decision**

For the reasons I have explained I uphold Mrs G's complaint. To put things right Mitsubishi HC Capital UK Plc trading as Hitachi Capital Consumer Finance must:

- Calculate the total payments Mrs G has made towards the solar panel system up until the date of settlement – A
- Use Mrs G's bills and FIT statements (where available), to work out the benefits she received up until the date of settlement\* – B
- Use B to calculate what Mrs G 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 overpayment until the date of settlement\*\* – C
- Reimburse C to Mrs G
- Use Mrs G'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 Mrs G additional compensation of £100

\* Where Mrs G has not been able to provide all the details of her meter readings, electricity bills and/or FIT benefits, Mitsubishi should complete the calculations above using known and reasonably assumed benefits.

\*\* If Mitsubishi HC Capital UK Plc trading as Hitachi Capital Consumer Finance considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs G how much it's taken off. It should also give Mrs G 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 Mrs G to accept or reject my decision before 23 July 2024.

Phillip Lai-Fang  
**Ombudsman**