DRN-4819612

The complaint

Mr M has complained, through a claims management company ("CMC"), about Creation Consumer Finance Ltd's ('Creation') response to a claim he made under Section 75 ('s.75') of the Consumer Credit Act 1974 (the 'CCA').

What happened

In May 2014, Mr M bought a solar panel system ('the system') from a company I'll call "G", using a ten-year fixed sum loan from Creation. Mr M paid off the loan early, on 11 Jul 2016.

Mr M complained to Creation through a Claims Management Company ("CMC"). He said that he was told by G that the system would not cost him a penny because the income from the Feed-In Tariff ("FIT") would cover the monthly loan repayments. But that hasn't happened and as a result he's suffered a financial loss.

Creation didn't respond within a reasonable time, so Mr M referred his complaint to the Financial Ombudsman Service. Creation told us that the claim had been made too late, since more than 6 years had passed since Mr M purchased the system. And that we didn't have jurisdiction to consider the complaint due to the time limits that we must apply.

Our Investigator said that we had jurisdiction to consider the complaint. And while the s.75 claim was made too late in relation to misrepresentation or breach of contract, under Section 140A of the CCA we could still consider whether there was an unfair relationship between Creation and Mr M, given when the relationship ended. However, having considered the evidence of what happened at the time of sale, the Investigator concluded there was insufficient evidence of an unfair relationship, and she didn't think the complaint should be upheld.

Mr M disagreed with this, so I've been asked to make a 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 not to uphold this complaint, for broadly the same reasons as our Investigator.

My findings on jurisdiction

I'm satisfied I have jurisdiction to consider Mr M'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 failure to respond to Mr M's s.75 claim within a reasonable time. This relates to a regulated activity under our compulsory jurisdiction. Mr M

brought his complaint about this to the Financial Ombudsman Service on 13 October 2020, after he had no response from Creation for around eight months. This was clearly within the six-year time limit under our rules.

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 continued, in an alleged unfair relationship with Mr M. Here the relationship ended on 11 July 2016. Mr M had six years from that date to make a complaint about his allegedly unfair relationship with Creation. He referred his complaint to the ombudsman service on 13 October 2020. 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 cause of action arose when an agreement was entered into on 6 May 2014. Mr M's CMC says it sent a letter to Creation on 11 February 2020. But Creation says it didn't receive this.

The CMC has provided no evidence that it followed up its letter of claim when it got no response, or that it filed a claim form with the Court or took any other action within the limitation period. I can see no reason why Mr M was unable to pursue the matter further with the Court or with our service within the limitation period.

So, I think Creation was justified in raising a limitation defence to the claim. While it would be for the Court to determine if the time limits had been breached, in my opinion it was not unreasonable of Creation to reject the s.75 claim on the basis that Mr M had made the claim too late.

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 M.

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 M has said that he was told by G's representative that the system would not cost him a penny because the income from the FIT would cover the monthly loan repayments.

Mr M has provided an order form signed on 6 May 2014. This shows the cash price of the system was £7,995.00, and the monthly loan repayment would be £103.35. However, the order form did not include information about how much electricity the system was expected to generate (although there was a space for this information on the form) or the financial benefits that could be expected in terms of FIT income and savings on electricity bills.

While the expected electricity generation wasn't shown on the order form, I do not think that is conclusive evidence that Mr M was misled or that his relationship with Creation was unfair on him. There are a number of plausible explanations for this information not having been written on the form – such as the sales representative simply forgetting to do so. In any case, the expected electrical generation figure would not have told Mr M very much about the system, since he would not have the expertise or knowledge to calculate the financial benefits that could result from this.

The credit agreement, signed the same day, shows the amount of credit was £7,995.00, the total charge for credit was £4,407.48, and the total amount payable was £12,402.48, via 120 monthly repayments of £103.35.

The CMC says the order form misled Mr M in terms of what he had to pay for the system. But given both documents were signed on the same day, presumably in the same meeting, I think it's clear that G gave Mr M clear information on both the loan interest and the total amount he was agreeing to pay for the system.

G was sent a copy of the letter of claim by the CMC when it approached Creation. G responded to this and pointed out that after installation of the system Mr M had signed a satisfaction note that made clear the total combined benefit (FIT and savings) would be £557.03. This is significantly less than the monthly loan repayments that Mr M had agreed to pay. And Mr M had never contacted G to make a complaint about the financial benefits of the system.

It seems unlikely that G would've told Mr M that the system would be self-funding on a monthly basis, only to give him a document immediately after installation which made it clear that was not the case. I'm also mindful that if the information on the satisfaction note differed significantly to what Mr M had been told prior to installation, it is likely that Mr M would've taken this up with G at the time, rather than around six years later.

Mr M has also been unable to provide a copy of the MCS certificate, which he would've been given after the system was installed. I know he had this since without it he could not have applied to receive FIT payments. This suggests he has not retained all the important documents in relation to the system. While that is understandable, given the amount of time that has passed and that he has moved house since then, it does open the possibility that Mr M was given clear written information about the benefits he could expect, as was good industry practice at that time, but that he has since lost those documents alongside the MCS certificate.

Overall, I think it is unlikely that a Court would conclude that what happened at the time of sale meant the relationship between Creation and Mr M was unfair on him.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 July 2024.

Phillip Lai-Fang
Ombudsman