

The complaint

Mr T has complained about Mitsubishi HC Capital UK Plc's ('Mitsubishi') 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 December 2013, Mr T bought a solar panel system ('the system'), from a company I'll call "S", using a ten-year fixed sum loan from Mitsubishi.

In May 2021, Mr T complained to Mitsubishi. He said that he was told by S that the money he would get back from the system would outweigh the loan repayments. However, that hasn't happened, and he's suffered a financial loss. Mr T also believed that what happened at the time of the sale created an unfair relationship between him and Mitsubishi.

Mitsubishi responded to the complaint in its final response. It said Mr T had brought his claim more than six years after the cause of action occurred and was out of time under the Limitation Act ('LA'). This meant Mitsubishi had no liability.

Unhappy with Mitsubishi's response, Mr T referred his complaint to our service.

Our Investigator considered Mr T's complaint. They ultimately thought that the complaint was about the effect of S's statements, which led Mr T to take out a loan with Mitsubishi that he otherwise would not have agreed to and:

- Given the s.75 claim was likely time barred under the LA, Mitsubishi's answer seemed fair in that respect.
- Mitsubishi ought to have considered s.140A when responding to the complaint, this was something 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 T and Mitsubishi.

Our Investigator recommended that Mr T keep the system and Mitsubishi take into account what Mr T had paid so far, along with the benefits he received, making sure he paid no more for the system than the benefits he would receive over the original ten-year loan term.

Mitsubishi disagreed. It said that the complaint was outside of our jurisdiction since the events complained about happened more than six years before Mr T made his complaint. And that if we did uphold the complaint, we should calculate redress in the same way a court did in a specific case. 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 Mr T's complaint, both in respect of the refusal by Mitsubishi to accept and pay his s.75 claim and allegations of an unfair relationship under s.140A. Mitsubishi is aware of how we approach jurisdiction in such cases.

The s.75 complaint

The event complained of here is Mitsubishi's alleged wrongful rejection of Mr T's s.75 claim on 13 May 2021, this relates to a regulated activity under our compulsory jurisdiction. Mr T brought his complaint about this to the ombudsman service on 20 May 2021. 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

It seems to me that Mr B's complaint is, at its heart, about the unfairness of his 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 Mr T. Here the relationship ended in January 2017 and Mr T made the complaint in May 2021. This is less than six years later, 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, breach of contract and cause of action arose when an agreement was entered into on 3 December 2013. Mr T brought his s.75 claim to Mitsubishi on 4 May 2021. That is more than six years after he entered into an agreement with it. 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 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 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 S for which Mitsubishi were responsible under s.56 when considering whether it is likely Mitsubishi had acted fairly and reasonably towards Mr T.

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

Mr T has said that he was told by S's representative that the money he would get back from the system would outweigh the loan repayments. At the time he agreed to the purchase, money was tight, and he only agreed to the purchase as he thought he would be better off each month.

I've looked at the documents provided by Mr T to see if there was anything contained within them that made it clear that the benefits of the system would not outweigh the loan repayments. The sales documents show the purchase price of £8,500.00 and the satisfaction note says that the system was expected to generate 3,568 kWh per year. But the documents do not show any information on the savings and income this would generate.

The credit agreement made clear that, if the loan ran to its full term, Mr T would pay £95.51 per month for 120 months, on top of the £500 deposit he had paid. So, in total the system would cost him £11,961.20. Mr T paid off the loan early, in 2017, so actually paid less than this.

Mitsubishi hasn't provided evidence to dispute what Mr T's said happened. And I think his recollection is plausible and persuasive. The sales documents do not show anything that contradicts Mr T's recollection of what he was told. So, I think it likely that S gave Mr T a false and misleading impression of benefits of the system relative to what Mr T was agreeing to pay for it.

I consider S's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr T was expected to receive by agreeing to the installation of the system. I consider that S'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 T went into the transaction. Either way, I think S's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr T'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 S's negotiations with Mr T 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 T and Mitsubishi 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 Mitsubishi has benefitted from the interest paid on a loan he would not otherwise have taken out.

Putting things right

In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Mr T and Mitsubishi's relationship arising out of S's misleading and false assurances as to the self-funding nature of the solar panel system. Mitsubishi should repay Mr T a sum that corresponds to the outcome he could reasonably have expected as a result of S's assurances. That is, that Mr T's loan repayments should amount to no more than the financial benefits he received for the original ten-year term of the loan.

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 Mr T's expectation of what he would receive. I consider Mr T has lost out, and has suffered unfairness in his relationship with Mitsubishi, to the extent that his loan repayments to Mitsubishi exceed the benefits from the solar panels. On that basis, I believe my determination results in fair compensation for Mr T.

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 Mr T received from the system over the 10-year term of the loan, so Mr T pays no more than that. To do that, I think it's important to consider the benefit Mr T received by way of FIT payments as well as through energy savings. Mr T 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 the fairness of its relationship with Mr T when responding to him has caused him some degree of trouble and upset. In recognition of this, Mitsubishi should also pay Mr T additional compensation as set out below.

My final decision

For the reasons I have explained I uphold Mr T's complaint. To put things right Mitsubishi HC Capital UK Plc must:

- Calculate the total payments (the deposit and monthly repayments) Mr T has made towards the solar panel system up until the date of settlement – A
- Use Mr T's bills and FIT statements, to work out the benefits he received up until the end of the original loan term* – B
- Use B to recalculate what Mr T should have paid each month towards the loan and calculate the difference between what he actually paid (A), and what he should have paid, applying 8% simple interest per year to any overpayment from the date of payment until the date of settlement** – C

- Reimburse C to Mr T ***
- Pay Mr T £100 additional compensation

*Where Mr T has not been able to provide all the details of his meter readings, electricity bills and/or FIT benefits, Mitsubishi HC Capital UK Plc should complete the calculation using known and reasonably assumed benefits.

** If Mitsubishi HC Capital UK Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

*** If the calculation shows that no payment is due to Mr T (that is the benefits were more than he actually paid), Mitsubishi should share the details of the calculation with Mr T by way of explanation. But it should still pay him the additional compensation for the trouble and upset caused by its failure to consider the fairness of its relationship with him when responding to the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 July 2024.

Phillip Lai-Fang
Ombudsman