

## **The complaint**

Mr L has complained about Creation Consumer Finance Ltd trading as Creation.Co.Uk's ('Creation') 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 into account Section 140A ('s.140A') of the CCA.

## **What happened**

In October 2014, Mr L bought a solar panel system ('the system'), from a company I'll call "E", using a ten-year fixed sum loan from Creation.

In June 2021, Mr L complained to Creation through a claims management company. He said that he was told by E that the income and savings from the system would fund the cost of the loan so he would not be financially worse off, however that hasn't happened, and he's suffered a financial loss. he also believed that what happened at the time of the sale created an unfair relationship between him and Creation.

In September 2021, Mr L sold the property.

Creation responded to the complaint in its final response. It dismissed the complaint as being made too late under the Dispute Resolution (DISP) Rules, which govern how financial businesses must handle complaints.

Unhappy with Creation's response, Mr L referred his complaint to our service.

When sending us its file, Creation also said that Mr L's complaint was out of time considering the provisions of the Limitation Act.

Our Investigator considered Mr L's complaint, they ultimately thought that:

- Given the s.75 claim was likely to be time barred under the Limitation Act, Creation's answer seemed fair.
- The s.140A complaint was one 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 L and Creation.

Our Investigator recommended that Mr L keep the system and Creation take into account what Mr L had paid so far, along with the benefits he received, making sure the system was effectively self-funding within the original loan term.

Mr L accepted the investigator's view.

Creation didn't respond. 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.

For the reasons explained below, I've decided to uphold this complaint.

### **My findings on jurisdiction**

I'm satisfied I have jurisdiction to consider Mr L'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 alleged wrongful rejection of Mr L's s.75 claim on 22 October 2022, this relates to a regulated activity under our compulsory jurisdiction. Mr L brought his complaint about this to the ombudsman service on 2 February 2022. 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 continues, in an alleged unfair relationship with Mr L. Here the relationship was ongoing at the time it was referred to the ombudsman service on 2 February 2022, 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 13 October 2014. Mr L brought his s.75 claim to Creation on 18 June 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 Creation 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 E 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 E to be the agent of Creation in any antecedent negotiations.

Taking this into account, I consider it would be fair and reasonable for me to consider account, as part of the complaint about an alleged unfair relationship, those negotiations and arrangements by E for which Creation were responsible under s.56, when considering whether it is likely Creation acted fairly and reasonably towards Mr L.

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 L has said that he was told by E's representative that the income and savings from the system would fund the cost of the loan so he would not be financially worse off. I haven't seen any evidence he had any prior interest in purchasing solar panels.

I've looked at the documents provided to see if there was anything contained within them that made it clear that the solar panel system wouldn't be self-funding. There is not. The contract shows the purchase price of the system but does not mention its expected benefits. The loan agreement sets out what Mr L agreed to pay – a total of £15,660 over ten years with repayments of £130.50 per month.

Creation hasn't provided evidence to dispute Mr L's recollection of what happened. Yet with no prior interest, Mr L agreed to an interest-bearing loan with a monthly repayment of around £130, payable for ten years. Given his lack of prior interest and the financial burden he took on I find Mr L's account of what he was told by E is credible and persuasive. The loan is a costly long-term commitment, and I don't think he would have seen this purchase appealing had he not been given the assurances he's said he received from E.

For the solar panels to pay for themselves, they would need to produce combined savings and income of around £1,500 per year. I have not seen anything to indicate Mr L's system was not performing as expected, but his system has not produced this level of benefit. So, these statements were not true.

I think E's representative ought reasonably to have been aware that Mr L's system would not have produced benefits at this level. Using assumptions that would've been reasonable at the time of sale, the benefits of the system over ten years would be much less than the total amount Mr L agreed to pay.

Considering Mr L's account about what he was told, the documentation he was shown at the time of the sale, and that Creation hasn't disputed what he's said, I think it likely E gave Mr L a false and misleading impression of the self-funding nature of the solar panel system. I think E's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr L was expected to receive by agreeing to its installation.

I think that E'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 L went into the transaction. Either way, I think E's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr L's point of view.

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

Where Creation is to be treated as responsible for E's negotiations with Mr L 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 L and Creation was unfair.

Because of this shortfall between Mr L's costs and the actual benefits, each month he has had to pay more than he expected to cover the difference between the benefits and the cost of the loan. So, Creation has benefitted from the interest paid on a loan Mr L would not otherwise have taken out.

### **Fair compensation**

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

Creation 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, Creation should recalculate the agreement based on the known and assumed savings and income Mr L received from the system over the ten-year term of the loan, so Mr L pays no more than that. To do that, I think it's important to consider the benefit Mr L received by way of FIT payments as well as through energy savings.

Mr L has provided to Creation all the FIT statements and electricity bills that are available from before he sold his property. Creation should use this information in its calculations and use reasonable assumptions for periods where evidence of the actual benefits is not available.

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

### **My final decision**

For the reasons I have explained I uphold Mr L's complaint. To put things right Creation Consumer Finance Ltd trading as Creation.Co.Uk must:

- Calculate the total payments (the deposit and any repayments) Mr L has made towards the system up until the date of settlement – A
- Use Mr L's bills and FIT statements, to work out the benefits he received up until the date of settlement\* – B
- Use B to recalculate what Mr L should have paid each month towards the loan over that period 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 the overpayment until the date of settlement\*\* – C
- Reimburse C to Mr L

- Use Mr L's bills and FIT statements, to work out the benefits he will receive for the period between the settlement of his 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 Mr L £100 additional compensation

\*Where Mr L has not been able to provide all the details of his meter readings, electricity bills and/or FIT benefits, Creation Consumer Finance Ltd trading as Creation.Co.Uk should complete the calculation using known and reasonably assumed benefits.

\*\* If Creation Consumer Finance Ltd trading as Creation.Co.Uk considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 26 July 2024.

Phillip Lai-Fang  
**Ombudsman**