

## **The complaint**

Mr L has complained about the way Creation Consumer Finance Ltd (“Creation”) 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 L has been represented in bringing his complaint but, to keep things simple, I’ll refer to Mr L throughout.

## **What happened**

In September 2014 Mr L entered into a fixed sum loan agreement with Creation to pay for a £5,994 solar panel system (“the system”) from a supplier I’ll call “P”. The agreement set out Mr L had the option of paying off the agreement with a single payment of £6,069 (the amount of credit plus a £75 administration fee) on or before 12 September 2015. Otherwise, Mr L was asked to pay back £10,727.40 with 60 monthly instalments of £178.79 beginning on 19 September 2015.

I understand Mr L decided to pay off the agreement by 11 September 2015, so he paid no interest.

In August 2021 Mr L sent a letter of claim to Creation explaining he thought the system was mis-sold. He said he became aware in September 2020 P had misled him the system would not be self-funding or cost neutral – although he also said he paid off the agreement within the first year because he realised it wouldn’t be self-funding if interest was applied. He said P told him the system would pay for itself within 8 years. He said P had fraudulently misled him and that he’d suffered a loss. He said P were well known to have misled customers and had been found to be in breach of the Renewable Energy Consumer Code (RECC). He said Creation was responsible for misleading statements made by P. He made claims in relation to misrepresentation, breach of contract, and an alleged unfair relationship taking into account s.140A. He said the six-year limitation period under the Limitation Act 1980 (“the LA”) shouldn’t apply and that other lenders had settled claims involving systems sold by P. He requested £4,818.30 plus interest to resolve the claim and said P had gone into liquidation.

Creation sent a final response letter in October 2021 to say it was dismissing the complaint without consideration because it had been brought out of time.

Unhappy with Creation’s response, Mr L decided to refer his complaint to the Financial Ombudsman in November 2021.

One of our investigators looked into things and said they thought the claims had been brought in time. They focussed on the unfair relationship claim because they said misrepresentations and a breach of contract could lead to an unfair relationship and so didn’t need to cover off section 75 (“s.75”) in detail. The investigator noted the contract set out an estimated first year benefit of around £620 based on the size of the system. So they thought Mr L had an idea of what he should expect to receive from the system but they didn’t think it

went into enough detail to show Mr L how the cost compared with the benefits. Our investigator didn't think Mr L would reasonably have been able to look at the paperwork to realise the panels wouldn't be self-funding within eight years.

Our investigator thought if the system were to pay for itself within 8 years and Mr L had paid off the agreement within the first year the system would need to have benefitted him by around £750 per year. But if he chose to pay off the agreement while it was interest bearing, the system would need to have benefitted him by around £1,340 per year.

Our investigator thought Mr L's account was plausible, and that the representations made by P weren't true. Our investigator said Creation could be held liable for those representations and that a court would likely find the relationship in question unfair. So they thought Creation should recalculate the loan based on known and assumed savings and income over 8 years so that Mr L pays no more than that, and he keeps the system. They also recommended £100 compensation for the impact of Creation not investigating the s.140A claim.

I issued a provisional decision on the complaint. I set out that I thought both the s.75 and s.140A complaint were referred in time. Neither party disputed this so I'm not going to repeat my findings on jurisdiction. For the merits of the complaint, I said:

*When considering whether representations and contractual promises by P 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 P 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 P for which Creation was responsible under s.56 when considering whether it is likely Creation had 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 says he was verbally misled that the system would effectively pay for itself within 8 years. I've taken account of what Mr L says he was told, and I've reviewed the documentation that I've been supplied.*

*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 L to be able to understand what was required to be repaid towards the agreement.*

*P gave Mr L a contract setting out the order description and the SAP calculations. It sets out the cost of the system but doesn't set out any of the estimated benefits. So I don't think this form would have enabled Mr L to know if the system would likely pay for itself within 8 years. P did, however, give Mr L an estimated returns document. This sets out:*

Total estimated year 1 benefit - £618.90  
Total estimated 20-year FIT benefit - £10,134.19  
Total estimated 25 year energy saving benefit - £13,937.92  
Total lifetime PV system benefit - £24,072.11.

The estimate form was based on a system that yielded around 2,550kWh.

We asked Mr L more about why he thought the system would pay for itself within 8 years based on the documentation supplied. Mr L said P told him the estimates were calculated using four and a half hours of light every day which was the equivalent of Christmas Day. He said P told him the system would generate more than this because there were 8 hours of daylight on average so his savings would be more and would match the monthly payments to Creation so the net result would be that it would be self-funding. He said it seemed like a "no brainer" to have the system installed.

I'll never know exactly what was discussed between Mr L and P. From looking at the calculations, if the system had produced around 2,550kWh and had Mr L paid off the agreement within the first year (which he did), I think the system would have broadly paid for itself within around 8 years based on reasonably used calculations. So if that's what P told Mr L, I don't think this was misleading. Mr L clearly understood how the agreement worked because he decided to pay it off within the first year to avoid the interest charge.

If P told Mr L the system would pay for itself within 8 years and Mr L decided to pay off the agreement over the term this would have been misleading because the savings wouldn't have covered the extra interest that would have been applied. But I'm conscious that's not what panned out.

However, based on my calculations, Mr L's system doesn't seem to be performing at around 2,550kWh per year. It looks like it's performing closer to between 2,100kWh and 2,150kWh. So even though Mr L isn't paying interest towards the loan, based on reasonably known calculations, the system would take an extra year or so to be self-funding. I'm conscious the kWh figure given to Mr L was an estimate and calculating how much sunlight there would be over the following 8 years isn't an exact science. Looking at what actually happened, Mr L hasn't paid any interest on the loan, and therefore Creation hasn't benefitted from the interest paid on the loan.

Moreover, I also don't agree with the way Mr L calculated his amount of claim. The figures he provided were based on him paying over £7,000 towards the loan but, as far as I can tell, he only paid the cash price of around £6,000. It's also not clear why he didn't raise his complaint sooner given he said he noticed at the time the system wouldn't be self-funding if he were to pay interest.

Overall, I'd like to have been more certain Mr L was misled about the system being self-funding within 8 years (if interest were to have been applied). I take the point the system looks like it might be slightly underperforming, but I'm not persuaded it's underperformed to the extent for me to determine P misled Mr L about the performance of the system either. For the reasons given above, I do have to bear in mind it was ultimately an estimate he was given. It's not clear either that Mr L wouldn't have still bought the system if he was told it would be self-funding within around 10 years given he was prepared to purchase it with an 8 year payback estimate (providing no interest was paid).

Even if I were to find something went wrong, I don't think I've seen enough to determine Mr L has suffered a loss through a breach of contract, misrepresentation, or in relation to his allegations under s.140A. So I'm not proposing to make any directions with regards to the self-funding nature of the system. And given those findings, I don't need to undertake a

*detailed analysis of the merits of the s.75 complaint. But I agree Creation's refusal to consider the claim has also caused Mr L some further inconvenience. And I think the £100 compensation recommended by our investigator is broadly a fair way to recognise that.*

Mr L had nothing further to add, and Creation accepted the provisional 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.

Seeing as though neither party has submitted anything new for me to consider, I see no reason to depart from the conclusions I reached in my provisional decision.

### **My final decision**

My final decision is that I uphold this complaint and direct Creation Consumer Finance Ltd to pay Mr L £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 August 2024.

Simon Wingfield  
**Ombudsman**