

## The complaint

Mr B has complained about the way Mitsubishi HC Capital UK Plc (“MHCC”) responded to claims he’d 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.

Mr B has been represented in bringing his complaint but, to keep things simple, I’ll refer to Mr B throughout.

## What happened

In August 2014 Mr B entered into a fixed sum loan agreement with MHCC to pay for a £7,468 solar panel system (“the system”) from a supplier I’ll call “S”. He paid a £700 deposit. The agreement set out the duration was 90 months and that he was due to pay 84 instalments of £100.43 (which would pay off the amount borrowed and £1,668.12 of interest) commencing on 6 February 2015. If he paid off the agreement before the deferred first payment date, he’d only pay the cash price plus a £29 administration fee.

In February 2021 Mr B raised a claim with MHCC explaining he thought the system was mis-sold. In summary, he said:

- He became aware in November 2020 that contrary to claims made by S his system wasn’t self-funding over 8 years. He thought S had deliberately misled him at the point of sale the system would be self-funding.
- MHCC was responsible for the misleading statements made by S, and that they created an unfair relationship under s.140A.
- He requested settlement of around £3,400 so that he pays no more than what he will save or make from the system.
- Other lenders had settled similar claims.
- S is in liquidation and MHCC is responsible for dealing with the claim.

MHCC sent a final response to the complaint in March 2021. In summary, it said:

- It thought the complaint was time barred under the Limitation Act 1980 (the “LA”) because Mr B raised the claim more than 6 years after the sale.
- It didn’t think S deliberately concealed information or that it acted fraudulently.
- Mr B could reasonably have raised the claim sooner.
- It noted the system was estimated to produce 2,954kWh of energy annually. Based on the meter reading Mr B supplied it thought it likely his system had produced around 3,177kWh. It said the estimate Mr B was given by S was in line with what he’d achieved – although it said Mr B’s estimate was slightly higher because S used a 50% electricity saving figure instead of a 37% which was more appropriate.

Unhappy with the response, in April 2021 Mr B decided to refer his complaint to the Financial Ombudsman to consider. After Mr B referred his complaint, MHCC decided to offer him £300 for not responding fully to his claim.

One of our investigators looked into things and said, in summary:

- There was insufficient evidence S told Mr B the system would be self-funding.
- The order form signed by Mr B gave an estimated first year benefit of around £775. His annual loan repayments were around £1,200. She thought it reasonably clear the system wouldn't be self-funding.
- Mr B ought to have known within a couple of years that the system wasn't performing as allegedly promised and she didn't agree it wasn't until November 2020 as he'd claimed. It was therefore not clear why he didn't raise his claim sooner.
- The £300 offer was fair.

Mr B didn't agree. He said the LA should be set aside because fraud took place at the point of sale. He said the fraud was that S sold the system as being self-funding. He said if he'd been aware of the issue previously he would have made the claim at the time.

As things weren't resolved, the complaint has been passed to me to decide.

### **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**

#### The s.75 complaint

The event complained of here is MHCC's alleged wrongful rejection of Mr B's s.75 claim in March 2021. This relates to a regulated activity under our compulsory jurisdiction. Mr B brought his complaint about this to the ombudsman service in April 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

The event complained of here is MHCC's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mr B. Here I understand the relationship was ongoing at the time it was referred to the ombudsman service in April 2021, so the complaint has been brought in time for the purposes of our jurisdiction. Although, as far as I can tell, I understand it should now be paid off.

### **Merits**

#### 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 MHCC 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 MHCC was responsible under s.56 when considering whether it is likely MHCC had acted fairly and reasonably towards Mr B.

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

Given my above conclusions and bearing in mind the purpose of my decision is to provide a fair outcome quickly with minimal formality, and that I can consider the alleged misrepresentations under the unfair relationship complaint, I don't think I need to provide a detailed analysis of Mr B's s.75 complaint. Furthermore, this doesn't stop me from reaching a fair outcome in the circumstances.

#### What happened?

Mr B says he was verbally misled that the system would effectively pay for itself. So I've taken account of what Mr B says he was told. I've also 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 B to be able to understand what was required to be repaid towards the agreement. But it doesn't set out any of the estimated benefits of the system.

I note Mr B signed a contract with S that set out the price of the system. This was signed before the fixed sum loan. I note it sets out a system performance section that said:

Generation income	£446.11
Export income	£71.62
Electricity saving (based on 50% usage)	£258.04
Estimated total 1 <sup>st</sup> year benefit	£775.77

I think the contract ought to have shown Mr B the savings wouldn't have covered the annual loan repayments which were around £1,200. I would have expected Mr B to have queried the shortfall when signing the agreement if he'd been told the system would be self-funding.

Like our investigator pointed out, it's not clear why it took Mr B so long to notice the system wouldn't be self-funding. He's not provided further explanation on that point other than he would have raised the claim sooner if he'd have been aware.

I asked our investigator to speak to Mr B to ask why he didn't realise the solar panels wouldn't be self-funding when the contract set out the estimated benefit was around £770 but the loan payments were higher. Mr B didn't provide any further recollections about the conversations that took place at the point of sale. So there's no further persuasive testimony for me to rely on that has persuaded me S told him it would be self-funding. Mr B broadly seemed happy with how the system was working, and said he'd not had any issues with it.

I've not seen enough of an explanation for why I should discount the estimated figures that were set out on the contract Mr B signed. The contract isn't several pages long. It looks like all the relevant information is contained within a page or two. The estimates aren't hidden in small print for example. He had some time prior to the installation as well to query things if he was unsure of anything.

Overall, while I've carefully considered what Mr B says he was told, given what I've set out above, on balance, I'm not persuaded there's sufficient evidence Mr B was misled the system would be self-funding. I therefore don't think MHCC's decision to decline the claim was ultimately unfair.

MHCC did, however, offer £300 for the impact of not investigating the claim fully. I find this to be broadly fair and make no further directions. To the extent, it's not already done so, it should pay this to Mr B.

### **My final decision**

My final decision is that I uphold this complaint and, to the extent it's not done so already, direct Mitsubishi HC Capital UK Plc to pay Mr B £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 August 2024.

Simon Wingfield  
**Ombudsman**