

## **The complaint**

Mr F has complained about Creation Consumer Finance Ltd's 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.

Mr F is represented in this complaint by a third party, but for ease of reference I will refer to any submissions made by the third party as being made by Mr F.

## **What happened**

In February 2015, Mr F bought a solar panel system ('the system') from a company I'll call "G" using a 10-year fixed sum loan from Creation Consumer Finance Ltd ("Creation"). The agreement sets out the amount of credit is £7,495 and that Mr F would make 120 monthly payments of £96.89. It also sets out that the total charge for credit is £4,131.84 with the total amount payable being £11,626.84.

On 28 January 2021, Mr F sent a letter of claim to Creation explaining he thought the system had been misrepresented and there was a breach of contract. In summary he said that:

- He was told by G that the 'feed in tariff' ('FIT') payments and electricity saving from the system would cover the cost of the loan repayments.
- His electricity bills would significantly reduce.
- He was offered incentives to agree to purchase the system in that he would receive a 50% off insurance voucher and £1,000 in commission if he placed an advertisement sign outside his property for two weeks.
- His property value would increase.
- The installers caused damage to his property when they installed the panels.

Mr F said that there had been breaches under the CCA, and Financial Conduct Authority ('FCA') rules, and the relationship between Creation and himself was unfair under s.140A because either Creation or G:

- Failed to ensure the advice process was accurate and not misleading.
- Failed to act honestly.
- Took unfair advantage of and pressured him.
- Failed to allow him the opportunity to thoroughly read the documents before signing any agreement.
- Failed to go through a proper credit assessment.
- Promoted the finance agreement by using a commission or other incentive.

Creation responded to the complaint on 4 November 2021 in their final response. They considered Mr F had brought his complaint outside of the time limits in the rules we follow.

Mr F then referred his complaint to our service as he wasn't happy with Creation's response.

An investigator considered Mr F's complaint and thought that -

- The s.75 claim was made in time.
- The s.140A complaint was one we could look at under our rules.
- G likely told Mr F that the system would be self-funding.
- Mr F has suffered a loss as the system wasn't self-funding.
- The installers damaged Mr F's roof when they installed the system.

He recommended that Mr F keep the system and Creation take into account what Mr F had paid so far, along with the benefits he received, making sure the system was effectively self-funding. He also recommended that Creation should reimburse Mr F with £5,040, which was the amount he paid to replace his roof and to pay interest on that sum. And he recommended Creation pay £100 compensation to Mr F for the impact of not looking into the merits of his complaint.

Mr F accepted the investigator's view. I can't see we received a response from Creation, so, the case was progressed to the next stage of our process, an Ombudsman's decision.

I issued my provisional decision on 12 July 2024, in which I said the following and which forms part of my final decision:

*'I'm satisfied I have jurisdiction to consider Mr F'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 F's s.75 claim on 4 November 2021, this relates to a regulated activity under our compulsory jurisdiction. Mr F had by this point already asked us to consider his complaint as Creation hadn't provided their response within eight weeks from receiving the complaint. It's clear that Mr F still wanted us to consider his complaint following Creation's letter of 4 November 2021 and our investigator then began that process. So, I'm satisfied that Mr F's 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 F. Here the relationship was ongoing at the time it was referred to the ombudsman service, so the complaint has been brought in time for the purposes of our jurisdiction.*

#### *Merits*

##### *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 F.*

*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 F has told this service that he first came into contact with G when their sales representative attended his property unprompted. He says the salesman convinced him that solar panels were the next big thing and that it would add value of £10,000 to his property. And Mr F says the salesman told him that, because the rear of his property was south facing, he would essentially get free electricity and would receive about £1,000 a year from FIT payments.*

*Mr F also says that G's salesman told him that if he bought the system with finance, the cost of the system would be fully paid for by the FIT payments and electricity savings he would receive.*

*Mr F has said he had no interest in solar panels until G's salesman knocked on his door, and I haven't seen any other evidence he had any prior interest in purchasing solar panels.*

*I've looked at the documents provided by Mr F to see if there was anything contained within them that made it clear that the solar panel system wouldn't be self-funding.*

*I've considered Mr F's loan agreement. I'm satisfied it clearly sets out, amongst other things, the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly loan repayments.*

*Mr F sent us all the documents he had kept from the point of sale including the order form and information about how the system would work and the financial benefits it would produce. Within this, there is a section titled: 'Predicted system performance' which includes the following table:*

Your expected feed in tariff for this installation is 13.88p and the export tariff is 4.77p

Year	Estimated Output	Collector Efficiency	FIT + RPI	Export @ 50% + RPI	Export Total	Total Generation	Export + Generation Total	Electricity Used on Site	Saving from Energy Used	Total Income <sup>2</sup>	Accumulative Total
1	3,568.00 kWh	100%	13.88p	4.77p	£85.10	£495.24	£580.34	1,784.00 kWh	£249.76	£830.10	£830.10
2	3,532.32 kWh	99%	14.30p	4.91p	£86.77	£504.99	£591.77	1,766.16 kWh	£257.15	£848.92	£1,679.02
3	3,496.64 kWh	98%	14.73p	5.06p	£88.47	£514.89	£603.36	1,748.32 kWh	£264.74	£868.10	£2,547.12
4	3,460.96 kWh	97%	15.17p	5.21p	£90.20	£524.93	£615.12	1,730.48 kWh	£272.52	£887.64	£3,434.76
5	3,425.28 kWh	96%	15.62p	5.37p	£91.95	£535.10	£627.05	1,712.64 kWh	£280.50	£907.54	£4,342.30
6	3,389.60 kWh	95%	16.09p	5.53p	£93.72	£545.41	£639.13	1,694.80 kWh	£288.68	£927.81	£5,270.11
7	3,353.92 kWh	94%	16.57p	5.70p	£95.51	£555.86	£651.37	1,676.96 kWh	£297.06	£948.44	£6,218.55
8	3,318.24 kWh	93%	17.07p	5.87p	£97.33	£566.45	£663.78	1,659.12 kWh	£305.66	£969.44	£7,187.98
9	3,282.56 kWh	92%	17.58p	6.04p	£99.17	£577.16	£676.34	1,641.28 kWh	£314.47	£990.81	£8,178.79
10	3,246.88 kWh	91%	18.11p	6.22p	£101.04	£588.02	£689.06	1,623.44 kWh	£323.49	£1,012.55	£9,191.34
11	3,211.20 kWh	90%	18.65p	6.41p	£102.93	£599.00	£701.93	1,605.60 kWh	£332.74	£1,034.67	£10,226.01
12	3,175.52 kWh	89%	19.21p	6.60p	£104.84	£610.12	£714.95	1,587.76 kWh	£342.20	£1,057.15	£11,283.16
13	3,139.84 kWh	88%	19.79p	6.80p	£106.77	£621.36	£728.13	1,569.92 kWh	£351.89	£1,080.02	£12,363.18
14	3,104.16 kWh	87%	20.38p	7.00p	£108.72	£632.73	£741.45	1,552.08 kWh	£361.81	£1,103.26	£13,466.43
15	3,068.48 kWh	86%	20.99p	7.22p	£110.70	£644.22	£754.92	1,534.24 kWh	£371.95	£1,126.87	£14,593.30
16	3,032.80 kWh	85%	21.62p	7.43p	£112.69	£655.83	£768.52	1,516.40 kWh	£382.33	£1,150.85	£15,744.16
17	2,997.12 kWh	84%	22.27p	7.65p	£114.71	£667.56	£782.26	1,498.56 kWh	£392.95	£1,175.21	£16,919.37
18	2,961.44 kWh	83%	22.94p	7.88p	£116.74	£679.40	£796.14	1,480.72 kWh	£403.80	£1,199.94	£18,119.31
19	2,925.76 kWh	82%	23.63p	8.12p	£118.79	£691.35	£810.15	1,462.88 kWh	£414.89	£1,225.04	£19,344.35
20	2,890.08 kWh	81%	24.34p	8.36p	£120.87	£703.41	£824.27	1,445.04 kWh	£426.23	£1,250.50	£20,594.85

*I don't think this table is particularly clear about the benefits Mr F could have expected to receive. It seems to indicate that Mr F would make a profit by year 9 as the colour in the final column changes from red to green. But it also shows that Mr F wouldn't see enough benefit to repay the total required under the loan agreement until year 13.*

*However, and in my view crucially, I've seen that the key information about the system, including the above table, was given to Mr F on 16 February 2015. But the order form, which shows that Mr F had agreed to take out finance, was signed by Mr F on 11 February 2015. So, Mr F hadn't at that point seen the information G subsequently produced which allowed him to compare the cost and benefits of the system against the costs of the finance.*

*I've also looked at a copy of G's website from January 2015 which states under a section 'Solar panels' that 'You can also consider a loan for solar panels, as the profit from the electricity should cover the repayment amounts – and leave you with money to spare'.*

*I think it follows that if the website emphasises the benefits of a solar panel system and how it would frequently cover the repayments of a finance agreement, it's likely this would have been a central part of G's conversation when selling the product. I think the website also strongly supports Mr F's testimony that G's representative told him, if he bought the system with finance, it would be fully paid for by his FIT payments and electricity savings.*

*So, I find what Mr F has said to be believable. I think G's website and the documentation supports his testimony that the potential benefits were discussed. I'm of the opinion that the benefits would be a key reason to purchase the system and his savings on his electricity bills and income from the FIT scheme would have been a central part of the conversation.*

*Given the documents I've seen don't contain much in the way of clear information about the benefits and taking into account that some documents seem to have been presented to Mr F days after G's salesman attended his property, Mr F would have looked to G's representative to help him understand how much the panels would cost, what they would bring in and how much he would benefit from the system. And, as I've said, I think the evidence I've seen supports Mr F's testimony that he was told by G's representative the system would be self-funding.*

*Creation hasn't provided evidence to dispute what Mr F said happened, including the documentation supplied by him. However, with no prior interest in solar panels before being visited unprompted by G, Mr F left the meeting having agreed to an interest-bearing loan, with a monthly repayment of £96.89, payable for 10 years, and prior to the documentation about the financial particulars of the arrangement being generated and shown to him. Given his lack of prior interest, and the financial burden he took on I find Mr F's account of what he was told by G, credible and persuasive. The loan is a costly long-term commitment, and I can't see why he would have seen this purchase appealing had he not been given the reassurances he's said he received from G.*

*For the solar panels to pay for themselves, they would need to produce combined savings and FIT income of around £1,163 per year. I have not seen anything to indicate Mr F's system was not performing as expected, but his system has not produced this. So, these statements were not true. I think G's representative must reasonably have been aware that Mr F's system would not have produced benefits at this level. Whilst there are elements of the calculations that had to be estimated, the amount of sunlight as an example, I think G's representative would have known that Mr F's system would not produce enough benefits to cover the overall cost of the system in the timescales stated verbally to Mr F.*

*Considering Mr F's account about what he was told, the documentation he was shown pre and post the sale, G's website and that Creation hasn't disputed these facts, I think it likely G gave Mr F a false and misleading impression of the self-funding nature of the solar panel system.*

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

*The s.75 complaint and additional s.140A complaint points*

*Given my above conclusions and bearing in mind the purpose of my decision is to provide a fair outcome quickly with minimal formality, I don't think I need to provide a detailed analysis of Mr F's s.75 complaint and his other s.140A complaint points. Furthermore, this doesn't stop me from reaching a fair outcome in the circumstances. The exception to this in relation to s.75 is Mr F's complaint about the damage caused to his roof by the installers which I shall deal with below.*

## *Damage to the roof*

*Mr F says that the installers damaged his roof when they installed the system. I understand that the installation happened in February 2015. I mention this because Creation has said that Mr F's s.75 complaint was made out of time. From what I can see, Mr F complained to Creation in January 2021, so I don't agree with Creation that he made his complaint about this too late. And, as Mr F paid for the installation using credit financed by Creation, he is able to make a like claim against Creation for breach of contract by G, which in this case is his assertion that G failed to install the system with 'reasonable care and skill'.*

*A third party (who I'll call "S") attended Mr F's property in September 2020, and they removed and reinstalled the system. Their report to Mr F identified the following issues:*

- '1. Broken roof tiles underneath the Solar Pv Panels.*
- 2. Broken tiles repaired with silicone which is not a permanent solution.*
- 3. The bracket screws had punctured the roof felt due to missing the joists and then being repositioned on the joists.*
- 4. Condition of the original roof tiles was very poor due to their age and they appeared to have become porous, I would have recommended that a new roof should be installed before the original Solar Pv system was installed.*
- 5. The 4mm DC cable had not been secured and was left sitting on the roof tiles which can lead to the insulation being damaged with wind movement over time.*
- 6. The panel securing clamp screws had been over tightened and the heads rounded off.*
- 7. The mc4 cable connectors were poorly made off and had not been tightened properly'.*

*I've seen that another third-party (who I'll call "R") invoiced Mr F for the works carried out to the roof. The invoice was for £5,040 and sets out the following work was undertaken:*

- Apply for building notice*
- Erect scaffolding*
- Take off/ replace solar units*
- Strip and recover main roof*
- Re tile bay roof*

*Clearly there were issues with Mr F's roof, and I note our investigator recommended that Creation pays Mr F the £5,040 he paid for the works to be done. However, I would only direct Creation to do this if I was satisfied that the cost he paid was solely due to the poor installation of the solar panel system.*

*I note that two companies seem to have carried out some form of inspection and works to the roof. We've asked Mr F for his recollections on what happened at this time, and he's said, via his representatives, that he 'managed to find' R, 'who also worked with' S, 'who could remove and reinstall the panels so the roof works could be done'.*

*Mr F also said that 'at the time of needing the new roof', he was 'struggling to find a roofer who would assist as they did not know how to deal with the solar panels on the roof already'.*

*Having considered this part of Mr F's complaint, I'm not satisfied on balance that the total cost that he paid to R flowed as a direct result of the installation of the system. I say this because Mr F said that he was struggling to find a roofer 'at the time of needing the new roof', which to me indicates that the roof was needing to be replaced anyway irrespective of the system being installed, and that Mr F had taken steps to get this underway. I note also that the report from S says that the 'condition of the original roof tiles was very poor due to their age, and they appeared to be porous'.*

*I currently find that it wouldn't be fair and reasonable for me to direct Creation to refund Mr F the full cost he paid to have the roof replaced, bearing in mind it's not clear to me that those works were required purely because of the way the system was installed. I do though currently find that the installers damaged Mr F's roof as the report from S sets that out.*

*Mr F has said that he recalls there was a cost of £950 for S to remove and reinstall the system. With that in mind, I currently find that it would be reasonable for Creation to pay him that amount, with interest from the time he paid that cost to the date of settlement of this complaint. It's not entirely clear when that cost was paid, but in the absence of anything else, I will assume that this happened when Mr F paid R on 29 September 2020.*

#### *Fair compensation*

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

*Therefore, to resolve the complaint, Creation should recalculate the agreement based on the known and assumed savings and income Mr F received from the system over the 10-year term of the loan, so he pays no more than that. To do that, I think it's important to consider the benefit Mr F received by way of FIT payments as well as through energy savings. Mr F will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to Creation.*

*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.*

*I also currently find that Creation should pay Mr F £950 in respect of the damage caused to his roof by the installers, and that they pay him interest at 8% simple per year on this, from 29 September 2020 to the date of settlement.*

*Finally, I consider that Creation's refusal to look at Mr F's claim caused him some degree of trouble and upset. In recognition of this, and in addition to what I have already set out above, Creation should also pay Mr F £100.*

### *My provisional decision*

*My provisional decision is that I uphold this complaint. To put things right, I intend to direct Creation to do the following:*

- *Calculate the total payments (the deposit and monthly repayments) Mr F has made towards the solar panel system up until the date of settlement – A*
- *Use Mr F'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 F would 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 to any overpayment from the date of payment until the date of settlement – C*
- *Reimburse C to Mr F*
- *Use Mr F'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 accordingly over the remaining term of the loan.*
- *Pay Mr F £950 for the cost he paid to remedy the damage caused to the roof by the installation of the system, with interest of 8% simple per year added, from 29 September 2020 to the date of settlement.*
- *Pay Mr F £100 for trouble and upset caused'.*

I asked both parties to send me any further evidence or comments to consider. However, neither party has done so, despite a reminder being sent.

### **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.

As neither party has provided me with anything further to consider, I have no cause to alter my provisional findings as copied above. I still consider these to be fair and reasonable.

### **Putting things right**

Creation needs to do the following:

- Calculate the total payments (the deposit and monthly repayments) Mr F has made towards the solar panel system up until the date of settlement – A
- Use Mr F'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 F would 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 to any overpayment from the date of payment until the date of settlement\*\* – C
- Reimburse C to Mr F
- Use Mr F'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 accordingly over the remaining term of the loan.

- Pay Mr F £950 for the cost he paid to remedy the damage caused to the roof by the installation of the system, with interest of 8% simple per year added, from 29 September 2020 to the date of settlement\*\*.
- Pay Mr F £100 for trouble and upset caused.

\*Where Mr F has not been able to provide all the details of his meter readings, electricity bills and/or FIT benefits, I am satisfied he has provided sufficient information in order for Creation to complete the calculation I have directed it to follow in the circumstances using known and reasonably assumed benefits.

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

### **My final decision**

My final decision is that I uphold this complaint. I direct Creation Consumer Finance Ltd to do what I've set out in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 30 August 2024.

Daniel Picken  
**Ombudsman**