

The complaint

Mr C has complained about Hitachi Capital (UK) Plc, now trading as 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 140.A ('s.140A') of the CCA.

What happened

In February 2014, Mr C bought a solar panel system ('the system') from a company I'll call "Z" using a 10-year fixed sum loan from Mitsubishi. I can't see we know the date the agreement was signed; however, I can see the purchase order from Z was dated 25 February 2014, and this is the date Mitsubishi is using too. The agreement sets out the amount of credit is £10,245, the monthly payments are £122.32, the total charge for credit is £4,433.40, and the total amount payable is £14,678.40.

Mitsubishi have told us that Mr C repaid his loan on 19 June 2017.

Mr C complained to Mitsubishi on 25 February 2020, explaining he thought the system was mis-sold, in summary Mr C said that Z:

- Told him that the system would pay for itself within the term of the loan, and cost him nothing
- Told him that the Feed in Tariff ('FIT') payments and savings he would receive would cover his monthly finance payments
- Conducted a high-pressure sale
- Failed to provide Mr C with information about a cooling off period
- Told him that the system was maintenance free over its 25-year life expectancy

Mr C said he had a like claim against Mitsubishi for misrepresentation and breach of contract under s.75. He said that the misrepresentations made by Z were on behalf of Mitsubishi under section 56 ("s.56") of the CCA. And that because of the misrepresentations, the breach of contract and matters that amounted to unfair trading practices the relationship between Mitsubishi and himself was unfair under s.140A.

In addition, Mr C said Mitsubishi had all of the facts in front of it to know Z was mis selling Solar Panel systems, therefore by not disassociating with Z, and continuing to offer finance for Z's products Mitsubishi had acted in a way that created an unfair relationship.

Mr C also asked Mitsubishi to provide evidence it had lent to him responsibly by carrying out affordability checks.

On the same day Mr C complained to Mitsubishi he also referred his complaint to our service, then again on 4 March 2020. In both these submissions an estimate for rectification costs to MCS standards was provided, but with no mention of why this had been included.

On 2 June 2020, given more than 8 weeks had passed since Mr C had raised his complaint with Mitsubishi, we wrote to it to say our service would be looking at the complaint.

Mitsubishi responded to the complaint on 30 July 2020 in its final response, it considered Mr C's complaint was time barred under the Limitation Act ('LA'). However, for the sake of completeness Mitsubishi provided a full response to the complaint, in summary it said:

- The documentation provided didn't show that the system had been misrepresented
- It lent to Mr C responsibly
- It didn't think the conduct of Z's representative was capable of giving rise to an unfair relationship between itself and Mr C, particularly when considering that -
 - It played no role in the sale of the panels
 - The documents provided clearly set out the cost and financial information relating to the purchase of the system
 - Mr C's right to cancel was clearly set out in the documents provided
 - Mr C had used the system for more than 6 years and had received and would continue to receive FIT payments and energy savings for the full life span of the system

In November 2021 Mitsubishi let this service know that whilst it maintained Mr C's complaint was time barred under the LA it may have caused some confusion and inconvenience responding to the complaint points, so had arranged for £350 to be issued to Mr C by cheque as a gesture of goodwill.

Mr C's complaint was considered by an Investigator, in summary she thought that:

- Given the s.75 claim was more likely to be time barred under the LA, Mitsubishi'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 C and Mitsubishi.

She recommended that Mr C keep the system and Mitsubishi take into account what he had paid so far, along with the benefits he received, making sure the system was effectively self-funding over the original loan term.

I can't see we received a response from Mr C or Mitsubishi, in the timescales the investigator gave so, the case was progressed to the next stage of our process on 1 March 2023, an Ombudsman's decision.

Mitsubishi responded on 3 March 2023, in summary it said:

- Our service didn't have jurisdiction to look at the s.75 or s.140A complaint because, in regard to both, the event being complained of was more than 6 years ago.
- Mr C hadn't complained about the handling of his s.75 claim, however even if he had and Mitsubishi issued a response, the Financial Ombudsman Service wouldn't have jurisdiction under DISP 2.8.1R(1) to consider it.
- Events can give rise to an unfair relationship, but an unfair relationship is not an event in itself – the end of the relationship may be the starting point for limitation purposes in civil litigation but is not the starting point for the Ombudsman's jurisdiction under DISP 2.8.2R. The event being considered should be the event that gave rise to the unfair relationship.

- Our service should be adopting the High Court's approach in *Hodgson v Creation Consumer Finance Limited* [2021] EWHC 2167 (Comm) ('Hodgson') as an appropriate mechanism for calculating redress

I issued a provisional decision on the complaint. I firstly set out my findings on jurisdiction saying why Mr C had brought his s.75 and s.140A claims in time. I then set out my findings on the merits and fair compensation. Both parties responded, Mr C accepted my provisional decision in full. Mitsubishi accepted my findings in regard to the merits but did not agree with the fair compensation I intended to direct it to pay. Mitsubishi proposed again I should adopt a different approach to fair compensation, and proposed I should use the following methodology:

- Benefits using electricity bills and FIT statements are calculated over the life of the panels: including degradation, would be 20 years.
- Benefits between years 11-20 have a 50% reduction applied to them
- RPI at 4% and EPI at 2.50%

Mitsubishi said using the above to calculate Mr C's benefits meant that:

- Benefits received between years 1 to 10 = £9,068.30
- Benefits received between years 10 to 20 (50% reduction) = £5,833.11
- Total Benefits received = £14,901.41

Therefore, no refund was owed to Mr C.

Given all parties agreed to my findings on the jurisdiction and merits I'm not going to set them out again. However, with regards to fair compensation in my provisional decision I said -

Fair compensation

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

Mitsubishi told us that it considers our approach to redress should be in accordance with the Court's decision in Hodgson. I have considered this 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 C's expectation of what he would receive. I consider Mr C has lost out, and has suffered unfairness in his relationship with Mitsubishi, to the extent that his loan repayments to it exceed the benefits from the solar panels. On that basis, I believe my determination results in fair compensation for Mr C.

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 C received from the solar panel 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 C received by way of FIT payments as well as through energy savings. Mr C will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to Mitsubishi. Mitsubishi have told us that Mr C repaid his loan on 19 June 2017. Therefore, Mr C will only have one option that's tenable as opposed to the 4 the investigator recommended.

I intend to tell Mitsubishi to:

- *Calculate the total payments (monthly repayments and final lump sum) Mr C has made towards the solar panel system up until the early date of settlement – A*
- *Use Mr C's bills and FIT statements, to work out the benefits he received up until the original loan term* – B*
- *Calculate the difference, between what Mr C actually paid (A), and what he should have paid (B), applying 8% simple interest to any overpayment from the date of payment until the date of settlement of the complaint** – C*
- *Reimburse C to Mr C*

I think Mitsubishi's final response letter may have caused some confusion. However, Mitsubishi itself admitted this, apologised and to account for any inconvenience or confusion arranged for £350 to be issued to Mr C by cheque in November 2021, I think this amount fairly compensates Mr C in the circumstances. To the extent Mitsubishi has not done so already, it should pay Mr C £350.

**Where Mr C is not able to provide all the details of his meter readings, electricity bills and/or FIT benefits, I am satisfied he has currently provided sufficient information in order for Mitsubishi to complete the calculation I intend to tell it to follow in the circumstances using known and reasonably assumed benefits.*

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

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.

It seems to me that Mitsubishi are suggesting a similar compensation methodology to the one used in the Hodgson judgement, mainly that benefits past the loan term should be included in the calculation, albeit with a reduction applied. This does not persuade me to depart from the conclusions I reached in my provisional decision. I say this as I explained in my determination the reasons why I don't think a different approach to fair compensation should be used.

As I said previously here, I'm considering fair redress for a complaint where I think it likely the supplier made a contractual promise regarding the self-funding nature of the solar panel system. But even if I'm wrong. I'm satisfied the assurances were such that fair compensation should be based on Mr C's expectation of what he would receive. Mr C has lost out, and therefore has suffered unfairness in his relationship with Mitsubishi, to the extent that his

loan repayments to it exceed the benefits from the solar panels. So, I believe my determination results in fair compensation for Mr C.

My final decision

My final decision is that I uphold Mr C's complaint and direct Mitsubishi HC Capital UK Plc to:

- Calculate the total payments (monthly repayments and final lump sum) Mr C has made towards the solar panel system up until the early date of settlement – A
- Use Mr C's bills and FIT statements, to work out the benefits he received up until the original loan term* – B
- Calculate the difference, between what Mr C actually paid (A), and what he should have paid (B), applying 8% simple interest to any overpayment from the date of payment until the date of settlement of the complaint** – C
- Reimburse C to Mr C
- If it has not already done so pay Mr C an additional £350 compensation

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

** If Mitsubishi considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much tax it's taken off. It should also give Mr C 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 C to accept or reject my decision before 29 August 2024.

Helen Boulton-Agg
Ombudsman