

## The complaint

Mrs G has complained about the way Mitsubishi HC Capital UK Plc (“MHCC”) responded to claims she’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 into account section 140A (“s.140A”) of the CCA.

Mrs G has been represented in bringing her complaint but, to keep things simple, I’ll refer to Mrs G throughout.

## What happened

In April 2014 Mrs G entered into a fixed sum loan agreement with MHCC to pay for a £9,083 solar panel system (“the system”) from a supplier I’ll call “S”. The total amount payable under the agreement was £13,546.80 and it was due to be paid back with 120 monthly repayments of £112.89. From what I’ve seen, the system was commissioned in June 2014.

In June 2020 Mrs G sent a complaint letter to MHCC explaining she thought the system was mis-sold. She said S cold called her and explained the system would save her money and that it’d be self-funding. She said S showed her several different graphs, tables and estimates. She said S told her it wouldn’t require maintenance and that she’d make a profit. In summary, she complained about misrepresentation, breach of contract and that S’s actions created an unfair relationship between herself and MHCC.

MHCC sent a response to the claim on 30 July 2020 saying it thought the complaint was time barred under the Limitation Act 1980 (the “LA”) because Mrs G raised the claim more than 6 years after the sale. It said Mrs G should have known soon after the purchase that the system wasn’t performing as allegedly promised. Moreover, it said the solar power estimate Mrs G was given didn’t factor in the cost of the loan. It said Mrs G hadn’t had the system long enough to be able to predict what she’d receive. It noted a disclaimer that said the performance of the system was an estimate. It said Mrs G hadn’t supplied terms and conditions. It thought the system was performing as expected and that she was receiving benefit.

Unhappy with the response, Mrs G referred her complaint to the ombudsman service on 29 January 2021.

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

- 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 Mrs G and MHCC.

Our investigator recommended MHCC recalculate the loan based on the known and assumed savings from the system over the term of the loan, so Mrs G pays no more than

that and she keeps the system. He also said MHCC should pay £100 compensation for the impact of not considering Mrs G's claim under s.140A.

Mrs G agreed, but MHCC didn't. In summary, it said:

- The complaint was brought more than six years after the events complained of, so outside the time limits which apply to the jurisdiction of the Financial Ombudsman.
- Mrs G's allegations of an unfair relationship don't relate to any events post-dating the sale of the system in April 2014.
- The end of a credit relationship may be the starting point for limitation purposes in civil litigation, but it isn't the starting point for the six-year period under DISP 2.8.2R(2)(a), where the unfair relationship itself would not constitute an event. It is the event(s) giving rise to an unfair relationship which are the "events complained of" for the purposes of that rule.
- Without prejudice to its position on jurisdiction it considers the approach to redress should be in accordance with the court decision in *Hodgson v Creation Consumer Finance Limited* [2021] EWHC 2167 (Comm) ("Hodgson").

I issued a provisional decision setting out why the complaint was within our jurisdiction to consider. Neither party disagreed with what I said so I'm not going to set it out again. For the merits of the complaint, my provisional decision said:

#### *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 were responsible under s.56 when considering whether it is likely MHCC had acted fairly and reasonably towards Mrs G.*

*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.*

#### *What happened?*

*Mrs G says she was verbally misled that the system would effectively pay for itself. I've taken account of what Mrs G says she 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 Mrs G to be able to understand what was required to be*

*repaid towards the agreement. But it doesn't set out what savings Mrs G could expect to make from the system.*

*I've looked at the other documentation supplied at the point of sale. I've seen a copy of the contract which, while not a very good copy, I can see says the system was estimated to perform at 3,664kWh per year. But it doesn't seem to show the financial benefits Mrs G was likely to receive.*

*Mrs G has also supplied a document setting out the estimated financial benefits of the system. This includes a table setting out the estimated yearly FIT payments; fuel saving; export income; annual benefit; monthly repayments and combined benefits. It estimates that after 20 years the total benefit would be around £36,000 and after 25 years it would be around £53,000. It shows the monthly repayments stopping after year 10. But I note the monthly payments on the table are £108, whereas the monthly repayments towards the agreement are slightly higher at around £113.*

*The document has another page with a graph showing the cost analysis and, again, it sets out the price of the system was around £9,000 and so with an estimated cumulative income of around £53,000 Mrs G could expect a profit of around £44,000 over 25 years. It doesn't set out the interest Mrs G needed to pay towards the agreement, but it indicates there's a 10-year payback time.*

*While I appreciate there are disclaimers on the document I've referred to above setting out the figures are estimates I can see how Mrs G may have taken the document to show that the system would be self-funding. I think a reasonable person may have done that. I don't think there was an easy way for Mrs G to have known the system wouldn't have been self-funding based on the documents she'd been supplied. And based on that, and what Mrs G said she was told by S, I think her allegations seem entirely plausible.*

*I've not seen anything to indicate Mrs G had an interest in purchasing solar panels before S contacted her. She said she was living on her own and she only agreed to the purchase because S told her the system would be self-funding and she'd generate free electricity. The loan is a costly and long-term commitment. I'm mindful it would be difficult to understand why, in this particular case, Mrs G would have agreed to the installation if her monthly outgoings would increase significantly. On balance, I don't think she would have purchased the system had S clearly told her she'd be out of pocket.*

*For the solar panels to be self-funding, they'd need to produce a combined savings and FIT income of around £1,350 per year. I've not seen anything to indicate there's a problem with the system. But I've also not seen anything to suggest Mrs G achieved the benefits required to make the system self-funding within the term of the agreement. I therefore find the representations that were likely made weren't true. Whilst there are elements of the calculations that had to be estimated, the amount of sunlight as an example, I think the salesperson ought to have known this and made it clear the system wouldn't have produced enough benefits to cover the overall cost of the fixed sum loan agreement.*

*Considering Mrs G's account about what she was told, the documentation from the point of sale, I think it likely S gave Mrs G a false and misleading impression of the self-funding nature of the system.*

*I consider S's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mrs G was expected to receive by agreeing to the installation of the system. I consider that S'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 Mrs G went into the transaction. Either way, I think S's assurances were seriously misleading and false, undermining the purpose of the transaction from Mrs G's point of view.*

*Would the court be likely to make a finding of unfairness under s.140A*

*Where MHCC is to be treated as responsible for S's negotiations with Mrs G 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 Mrs G and MHCC was unfair.*

*Because of this shortfall between her costs and the actual benefits, each month she has had to pay more than she expected to cover the difference between her solar benefits and the cost of the loan. So, clearly MHCC has benefitted from the interest paid on a loan she would otherwise have not taken out.*

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

*Given my findings above I'm not proposing to provide a detailed analysis of Mrs G's s.75 complaint and also her other s.140A complaint points.*

*This doesn't stop me from reaching a fair outcome in the circumstances, and I'm mindful the purpose of my decision is to provide a fair outcome quickly with minimal formality.*

*Fair compensation*

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

*MHCC told us that it considers our approach to redress should be in accordance with the court's decision in Hodgson.*

*I have considered the Hodgson 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 Mrs G's expectation of what she would receive. I consider Mrs G has lost out, and has suffered unfairness in her relationship with MHCC, to the extent that her loan repayments to MHCC exceed the benefits from the solar panels. On that basis, I believe my determination results in fair compensation for Mrs G.*

*MHCC 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, MHCC should recalculate the agreement based on the known and assumed savings and income Mrs G received from the solar panel system over the 10-year term of the loan, so she pays no more than that. To do that, I think it's*

*important to consider the benefit Mrs G received by way of FIT payments as well as through energy savings. Mrs G will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to MHCC.*

*I also find MHCC's refusal to consider the s.140A claim has also caused Mrs G some further inconvenience. And I think the £100 compensation recommended by our investigator is broadly a fair way to recognise that.*

Mrs G provided a more up to date FIT statement. MHCC didn't agree with the provisional decision. In summary, it said:

- While it appreciated Mrs G may not have understood the benefits table in isolation as the cumulative total wasn't included, it thought this was made clear in the bar chart the system wouldn't be totally self-funding within the loan term. It said the bar chart shows on the bottom row the years, and that it would take over 10 years to break even. And along the side it shows the level of benefits receivable in monetary terms. So it thought it clear enough the benefits wouldn't quite cover the loan repayments.
- It was curious as to whether Mrs G has been in contact with S to challenge the documentation she'd been provided or if she'd brought a similar complaint to its attention.

While it thought the complaint should be rejected, if it were to be upheld it didn't agree with the redress principles. It proposed a different 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%.

MHCC said using the above to calculate Mrs G's benefits meant that:

- Benefits received between years 1 to 10 = £9,576.33
- Benefits received between years 10 to 20 (50% reduction) = £6,180.13
- Total benefits received = £15,756.46

Therefore, no refund was owed to Mrs G.

### **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.

I'd like to thank the parties for their responses. I've thought about what MHCC has said but I'm not going to depart from the conclusions I reached previously.

MHCC is indicating it thinks the forms were clear enough the system wouldn't be self-funding within the loan term. The forms are only one of the things I've taken into account when deciding this complaint. I've set out reasoning for why I thought Mrs G's testimony seemed credible. I disagree it was made clear the system wouldn't be self-funding within the loan term based on the documentation, alongside taking into account what Mrs G said she was told by S.

As I explained before, the first table shows combined benefits but doesn't show a running total. It doesn't have the correct monthly repayment towards the agreement but it's similar.

Mrs G was required to pay back around £13,500 over 10 years towards the agreement, and the table shows a 20-year benefit of over £35,000 and a 25-year benefit of over £53,000. So it seems plausible S told Mrs G the system would be self-funding within the loan term. By year 10, the combined benefits were over £1,500 – well over her annual loan costs. She would have had to undertake several calculations to realise the system wasn't self-funding within the loan term.

Moreover, the second table has a line added to the graph that seems to represent the payments towards the system, and this is steady for 10 years and then drops off between year 10 and 11. The form has details of the cash price of the system but doesn't include details of the interest applied. And it estimates profit of over £44,000 within 25 years. I don't think the form is clear enough to show that the cash price *and* interest applied won't be offset by the system savings within the loan term.

All things considered, I think the documentation ought to have made it clearer the system (including interest) wouldn't be self-funding within the loan term. And when taking into account what Mrs G says she was told, on balance, I think S did sell the system as being self-funding within the loan term.

Mrs G explained she didn't raise a claim sooner because she didn't know she could claim money back for the system. I think it also would have taken a few years for her to be in a position to realise the system would not be self-funding within the loan term. She received support to raise her claim and decided to bring it against MHCC. I don't think it makes a material difference to this complaint that I can't see she complained against S, and I don't think I need to investigate this further to reach a fair outcome.

It seems to me that MHCC 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 Mrs G's expectation of what she would receive. Mrs G has lost out, and therefore has suffered unfairness in her relationship with MHCC, to the extent that her loan repayments to it exceed the benefits from the solar panels. So, I believe my determination results in fair compensation for Mrs G.

## **My final decision**

For the reasons I have explained I uphold Mrs G's complaint and direct Mitsubishi HC Capital UK Plc to

- Calculate the total payments (the deposit and monthly repayments) Mrs G has made towards the solar panel system – A
- Use Mrs G's bills and FIT statements to work out the benefits she received from the start date of the loan, up until the end of the term\* – B
- Use B to recalculate what Mrs G should have paid each month towards the loan over that period and calculate the difference, between what she actually paid (A), and what she should have paid, applying 8% simple annual interest to any overpayment from the date of payment until the date of settlement\*\* – C
- Reimburse C to Mrs G
- Pay Mrs G £100 compensation

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 2 September 2024.

Simon Wingfield  
**Ombudsman**