DRN-4948333

## The complaint

Mr S has complained about Creation Consumer Finance Ltd ('Creation')'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.

## What happened

In July 2015, Mr S bought two solar panel systems ('the systems'), from a company I'll call "the supplier", using a ten-year fixed sum loan from Creation. The first was for his home and the second for another property he owned but did not reside at. He paid a deposit, and the loan covered the remaining cost of the two systems.

In September 2021, Mr S made a claim to Creation through a claims management company ("CMC"). This said that Mr S was told by the supplier that the income and savings from the systems would fund the cost of the loan so he would be no worse off each month. Mr S says that didn't happen.

The letter of claim also said that what happened at the time of the sale created an unfair relationship between Mr S and Creation, including because:

1. No suitable creditworthiness assessment was carried out before Creation agreed to the loan.

2. No pre-contract credit information was provided to Mr S.

3. There is no evidence that Mr S was given notice of his cancellation rights.

4. The sale took place in a high-pressure selling environment.

5. Full details of the credit agreement were not explained to Mr S, and he did not understand the total costs of the loan.

6. Creation received commission which Mr S was not told about.

Creation responded to the claim in October 2021. Creation treated the claim as a complaint and said that Mr S had brought his complaint too late. Creation dismissed the complaint without responding to the claim, which it said was allowed by the Dispute Resolution (DISP) Rules. These rules set out how financial businesses should handle complaints.

Unhappy with Creation's response, Mr S contacted the Financial Ombudsman Service.

Our investigator looked into what had happened. He said that:

- Given the s.75 claim was likely to be time barred under the Limitation Act, Creation's refusal of this part of the claim was 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 S and Creation.

Our Investigator recommended that Mr S keep the systems and Creation take into account what Mr S had paid so far, along with the benefits he received, making sure the systems were effectively self-funding.

Neither Creation nor Mr S provided any response by the deadline given. So, I've been asked to make a decision.

I issued a provisional decision explaining why I was not planning to uphold the complaint.

Mr S responded to say, "I'm sorry to say but there is nothing we can think of to add to the complaint. Only bitter disappointment about the failure of the system and wish we had never had it installed. All it has turned out to be is debt! And broken with no one to call to fix it so we could get even a little return on it."

Creation did not respond by the deadline I gave.

**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**

I'm satisfied I have jurisdiction to consider Mr S'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 S's s.75 claim on 3 September 2021. This relates to a regulated activity under our compulsory jurisdiction. Mr S brought his complaint about this to the ombudsman service on in February 2022. 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 Creation's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mr S. Here the relationship was ongoing at the time it was referred to the ombudsman service in February 2022, so the complaint has been brought in time for the purposes of our jurisdiction.

**My findings on the merits of the complaint**

The s.75 complaint

The law imposes a six-year limitation period on claims for misrepresentation and breach of contract, after which they become time barred.

In this case the alleged misrepresentation and alleged breach cause of action arose when an agreement was entered into on 17 July 2015. Mr S brought his s.75 claim to Creation on 3 September 2021. That is more than six years after he entered into the credit agreement with Creation. Given this, I think Creation would have no liability for the s.75 claim. So, I do not uphold this part of the complaint.

The unfair relationship under s.140A complaint

When considering whether representations and contractual promises by the supplier 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 the supplier 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 the supplier for which Creation were responsible under s.56 when considering whether it is likely Creation had acted fairly and reasonably towards Mr S.

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 Mr S was told at the time of sale

The letter of claim says that Mr S was told that the income and savings from the system would fund the cost of the loan so he would be no worse off each month. When our investigator asked Mr S about his recollection of the sale, he let us know that he'd been told that, "it would be a good deal and a profitable one for the future of our income, implying a good amount of cash back from our electricity suppliers."

Mr S has not provided any sales documents which could shed further light on what information he was given at the time of sale.

I've looked at the supplier's website from the time of sale, which is available on the Internet Archive (I provided a link to this in my provisional decision). This had the following example of the benefits that might be provided by a domestic solar panel system:

**So what are the financial benefits?**

- The Feed In Tariff (FIT) will generate an income for 20 years. The Government estimate a south facing roof with 16 panels may produce 3672 kWh per year. If you multiply this by the FIT rate of 14.90p, which is index linked you may receive over £547 per year.
- You may receive an income of over £80 per year for exporting electricity back to the grid. You will be paid 4.64 p for half of what you generate every year.
- Because you are producing your own FREE electric you won`t have to buy from the grid, so your bills will be significantly lower. Our example shows a household which uses half of the free electric produced at a rate of 14p.

So, add the annual Tariff, export income and electricity saved together and your annual benefit could be over £886. Over the 20 year period your investment could return nearly £18,000.

Did you know the Feed in Tariff income, which is indexed linked and lasts twenty years, must be fitted by an MCS accredited company in order for you to be eligible to be paid every quarter.

* The performance of a Solar PV system is impossible to predict with certainty due to the variability in the amount of solar radiation (sunlight) from year to year. This estimate uses SAP Guidelines and is given as guidance only. It should not be considered as a guarantee of performance.

The figures in this example do not seem unreasonable. They are based on the FIT unit rates and the cost of electricity at that time, as well as the industry standard self-consumption rate of 50%. Nowhere on the archived website does it suggest the benefits of a solar panel system could cover the monthly cost if a loan is used, or that the system would in effect be free or self-funding. I think this is relevant to Mr S's sale because it suggests that the supplier was making a reasonable assessment of the benefits of the systems it was selling at that time.

Mr S has provided a welcome letter and attachments that were sent by the supplier in relation to each installation. Both gave figures for "predicted system performance" and warned that this was impossible to predict with certainty.

The welcome letter for the first system is dated 7 July 2015. This stated the annual benefits of the first system would be as follows:

- Contract value £7,500.00
- Output 2,203 kWh per year
- FIT generation rate 12.92p £284.65
- FIT export rate 4.85p £53.43
- Import rate (for savings) 18p £209.30
- Total income/savings £547.39
- Annual ROI 7.30%

ROI means return on investment – in this case the annual return as a percentage of the contract value.

So, I'm satisfied that before Mr S signed the credit agreement he was aware that the first system would provide a benefit of £547.39 per year, or 7.3% of the purchase price.

The credit agreement was signed before the second welcome letter. It showed the following information about the loan:

- Purchase price £13,600
- Deposit paid £1,600
- Credit £12,000
- Charge for credit £6,615.35
- Total payable £20,215.35
- 120 repayments of £155.12 per month

So, when signing the credit agreement, it would have been clear to Mr S that the benefits of the first system would not cover the monthly or annual loan repayments.

The welcome letter for the second system is dated 3 August 2015. This was after Mr S signed the credit agreement. It provided the following information about the annual benefits of the second system:

- Contract value £7,000.00
- Output 1,468 kWh
- FIT generation rate 12.92p £189.77
- FIT export rate 4.85p £35.62
- Import rate (for savings) 18p £235.01
- Total income/savings £460.40
- Annual ROI 6.60%

So, the combined benefits of the two systems shown in the welcome letters was £1,007.79 per year. This compares to the loan repayments of £155.12 per month which equates to £1,861.44 per year. From the welcome letters it is clear that the benefits of the system would not cover the loan repayments.

I'm mindful that Mr S did not live at the second property, so would not benefit from any electricity savings from the system. He would only benefit from the FIT income from that system. I think he'd have been aware of this at the time.

While the welcome letter for the second system is dated after the credit agreement was signed, it is clear that when signing the credit agreement Mr S was agreeing to purchase two systems. I say this because the purchase price shown on the credit agreement included the cost of both the systems. It stands to reason that prior to signing the credit agreement there would at least have been a discussion about both systems. And it is likely that a contract would've been signed, although this has not been provided to us.

The welcome letters and the information on the supplier's website make me think that it is likely the benefits discussed would've been realistic and in line with what is shown in the welcome letters. If that was not the case, I would have expected Mr S to do something about this when receiving the welcome letters, or within a reasonable time after installation – when he would've realised the loan repayments were much more than the benefits. But in fact, Mr S didn't raise any concerns about the benefits he was receiving until over six years after

the sale took place – even though the supplier was still in business for around five years after installation.

Overall, I am not persuaded that the supplier told Mr S the system would pay for itself so that he would be no worse off financially each month. It seems more likely that the supplier gave Mr S a reasonable indication of what the benefits would be, and that these were much less than the loan repayments.

Because I do not think that the supplier misled Mr S about the benefits of the system, I do not think that the way the system was represented to him meant that his relationship with Creation was unfair.

Other points from the letter of claim

The letter of claim makes some other points as to why the relationship between Mr S and Creation may be unfair. So, I have thought about these as well. I summarise my findings below. Overall, I do not think it is likely that any of these points would render Mr S's relationship with Creation unfair.

1. *No suitable creditworthiness assessment was carried out before Creation agreed to the loan.*

I have not seen details of the creditworthiness assessment carried out. However, there has been no suggestion that the lending was irresponsible or that it was unaffordable for Mr S.

I said in my provisional decision that if Mr S thought the lending was irresponsible or unaffordable then he should provide information and evidence about this in response to this provisional decision. He did not provide any comments, information, or evidence in relation to this. So, it seems unlikely that a suitable creditworthiness assessment would've led to Creation declining the loan application.

2. *No pre-contract credit information was provided to Mr S.*

The CMC has provided a copy of the pre-contract credit information. It's unclear if this is a copy that Mr S held (in which case he was given this) or if this was received from Creation prior to the claim being made.

That it exists suggests it is likely that Mr S was given a copy of it. However, even if Mr S was not provided with this, he signed the credit agreement which has all the same information on it. It is not clear to me that having this information sooner would've led to Mr S taking different action, such as not taking the loan or not purchasing the systems.

3. *There is no evidence that Mr S was given notice of his cancellation rights.*

Mr S has not provided a copy of the sales contract or terms and conditions, which would normally include the cancellation rights. In any case, there is no suggestion that Mr S wanted to cancel the contract within the 14-day cooling off period, or that he would've done so if he'd been given notice of the cancellation rights. So, I don't think this would've made any difference to what happened.

4. *The sale took place in a high-pressure selling environment.*

The letter of claim has not set out what pressure was applied. And Mr S did not mention any concerns about being pressured into signing the contract when he told us about his

recollection of the sale. So, I think there is insufficient evidence that Mr S was pressured into the agreement.

5. *Full details of the credit agreement were not explained to Mr S, and he did not understand the total costs of the loan.*

Mr S signed the credit agreement, which clearly set out what he was agreeing to pay and over what period. If he had any concerns about this he could've raised it before signing the agreement.

6. *Creation received commission which Mr S was not told about.*

It would be unusual for a lender to receive commission in a situation such as this.

Mr S's response to the provisional decision

I acknowledge Mr S's disappointment. His comments suggest that one or both of the systems are broken or not working in some way. If that is the case – which has not been mentioned previously as part of this complaint – Mr S can ask Creation if it can help (for example it may agree to inspect the system if it is still under warranty, to see if Creation has any liability for repairs). But that is a separate matter to this complaint about the fairness of his relationship with Creation. Otherwise, he can arrange for the system to be inspected and repaired at his own cost.

Summary

Overall, I am not persuaded that a court would conclude that Mr S's relationship with Creation was unfair. And I've found no compelling reason as to why this complaint should be upheld.

**My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 September 2024.

Phillip Lai-Fang
**Ombudsman**