

The complaint

Mrs G has complained about the way Mitsubishi HC Capital UK Plc (“Mitsubishi”) responded to claims she’d made under section 75 (“s.75”) of the Consumer Credit Act 1974 (“the CCA”), and an alleged 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 March 2014 Mrs G entered into a fixed sum loan agreement with Mitsubishi to pay for a £6,495 solar panel system (“the system”) from a supplier I’ll call “P”. The total amount payable under the agreement was £10,076.40. Mrs G was due to pay back the agreement with 120 monthly repayments of £83.97.

On 4 October 2021, Mrs G put in a claim with Mitsubishi explaining she thought the system was mis-sold. In summary, she said that P:

- Told her that the system would be self-funding.
- Had deliberately misled her at the point of sale as the system has not been self-funding.
- Mitsubishi was responsible for the misleading statements made by P.

Ultimately, Mrs G said the system was misrepresented and believed the statements and several other actions at the time of the sale created an unfair relationship between herself and Mitsubishi.

Mitsubishi sent a final response letter on 19 October 2021. It considered Mrs G’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 Ms M responsibly.

Unhappy with that response Mrs G referred her complaint to our service on 25 October 2021.

Mrs G’s complaint was considered by an Investigator, in summary he 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 Mrs G and Mitsubishi.

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

Mitsubishi responded saying that documentation from the time of the sale set out the estimated first year benefit was around £600, which was much less than what would be required to cover the credit agreement repayments. So, Mitsubishi thought the complaint should not be upheld.

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

I issued my provisional decision on 29 July 2024, a section of which is included below, and forms part of, this decision. In my provisional decision, I set out the reasons why it was my intention not to uphold Mrs G's complaint. I set out an extract below:

"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 Mitsubishi's alleged wrongful rejection of Mrs G's s.75 claim in October 2021. This relates to a regulated activity under our compulsory jurisdiction. Mrs G brought her complaint about this to the ombudsman service in October 2021. So, her 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 Mitsubishi's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mrs G. Here the relationship was ongoing at the time it was referred to the ombudsman service in October 2021, 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 P 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 P to be the agent of Mitsubishi 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 P for which Mitsubishi were responsible under s.56 when considering whether it is likely Mitsubishi 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 Mitsubishi 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 Mrs G's s.75 complaint. Furthermore, this doesn't stop me from reaching a fair outcome in the circumstances.

What happened?

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

I'm also mindful that the order form contained a section which described the estimated annual output and likely benefits. This set out the following estimates:

- Annual fit payment of £306.07.*
- Annual export payment of £47.65.*
- Reduction in annual energy of £251.*
- Total benefit of £604.*

I think the above mentioned document ought to have shown Mrs G the savings wouldn't have covered the annual loan repayments cost which was around £1,007. I would have expected Mrs G to have queried the shortfall if she'd been told the system would be self-funding.

We asked Mrs G about this. Mrs G told us, "I cannot remember seeing this document. The seller told me to ignore any numbers and that it would make the money back."

But as I said above, I think the loan agreement was broadly set out clearly enough for Mrs G to have been able to understand what was required to be repaid. Mrs G doesn't recall seeing this document. That may be, but I have noted that Mrs G signed that same form on 12 March 2014. So, it seems more likely that Mrs G did see the form, even if she doesn't recall having done so now.

I'm not pretending this is straightforward, but it seems more likely that it would have been straight-forward enough for Mrs G to have seen the system wouldn't be self-funding within the term of the agreement, based on the evidence she had at the time which she's supplied as part of her claim and complaint and which she signed at the time of the sale.

Overall, while I've carefully considered what Mrs G says she was told, given what I've set out above, I'm not persuaded there's sufficient evidence Mrs G was misled the system would be self-funding. Therefore, I don't have the grounds to say that Mitsubishi's decision to decline the claim was unfair."

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 12 August 2024. Neither party has accepted acknowledged receiving the provisional decision, made any further submissions or asked for an extension to do so. I consider that both parties have had sufficient time to make a further submission had they wished to do so. So, I'm proceeding to my final decision.

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.

Given that there's no new information for me to consider following my provisional decision, I have no reason to depart from those findings. And as I've already set out my full reasons for not upholding Mrs G's complaint, I have nothing further to add.

My final decision

For the reasons set out, I'm not upholding Mrs G's complaint about Mitsubishi HC Capital UK Plc.

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

Douglas Sayers
Ombudsman