

## **The complaint**

Mr D has complained about Creation Consumer Finance Ltd's ("Creation") response to a claim he made under the Consumer Credit Act 1974 (the "CCA") and his request for money back.

## **What happened**

In July 2014, Mr D bought a solar panel system ('the system') from a company I'll call "P" using a 10-year fixed sum loan from Creation. The agreement sets out the amount of credit is £7,500; the monthly payments are £98.70; and the total charge for credit is £4,209. There was a £135 arrangement fee and the total amount payable under the agreement was £11,844.

I understand Mr D settled the loan in 2018. In August 2021 he raised a complaint with Creation. In summary, he said:

- P mis-sold the system and it has now gone into liquidation.
- P told him the system would effectively pay for itself within 7 years from the benefits received.
- He paid off the agreement early to mitigate his losses.
- He's lost out as a result of P's actions.

Creation sent a final response letter in October 2021. It said it wasn't considering Mr D's claim because it had been brought out of time.

Mr D referred his complaint to the Financial Ombudsman in October 2021. One of our investigators looked into things and said, in summary:

- A section 75 ("s.75") claim was more likely to be time barred under the Limitation Act 1980 (the "LA") and so Creation's answer broadly seemed fair.
- She could consider whether the alleged misrepresentations could have created an unfair relationship between Mr D and Creation under section 140A ("s.140A") of the CCA.
- She found that a complaint about an unfair relationship was one we could look at under our rules and that it had been referred in time.
- A court would likely find an unfair relationship had been created between Mr D and Creation.

She recommended that Mr D keep the system and Creation take into account what Mr D had paid so far, along with the benefits he received, making sure the system was effectively self-funding over the original loan term. She also recommended Creation pay Mr D £100 compensation for not looking into the s.140A claim.

I issued a provisional decision that set out my provisional thoughts on our jurisdiction to consider the complaint as well as the merits of the complaint. I also issued a subsequent

jurisdiction decision saying why I thought the complaint was within our jurisdiction, so I won't go over that again. For the merits of the complaint, my provisional decision said:

## **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 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 P for which Creation were responsible under s.56 when considering whether it is likely Creation had acted fairly and reasonably towards Mr D.*

*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 D says he was verbally misled that the system would effectively pay for itself. So I've taken account of what Mr D says he was told. I've also reviewed the documentation that I've been supplied.*

*I can see Mr D signed a contract on 30 July 2014. This was for 12 panels, and it set out there was a panel output of 3,150kWh. It also set out there was a total savings and tariffs of £823. It's not clear what period this is over, but I think it was intended to be annually.*

*P also gave Mr D an energy cost calculator table that sets out at 12% increases this would increase from £800 at year 1 incrementally up to £2,218 at year 10 with a total for 10 years of £14,039.*

*The fixed sum loan agreement Mr D signed also on 30 July 2014 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 Mr D to be able to understand what was required to be repaid towards the agreement. But it doesn't set out any of the estimated benefits of the system.*

*Mr D has explained that P was only able to install 10 panels instead of 12. And I understand the installation took place on 19 August 2014. He was given another quote on 19 August 2014 for the 10 panels. The price was the same but Mr D has explained P told him the panels being fitted were of a higher quality so he wouldn't lose out. He was also given a handover certificate, which while dated 1 July 2014, I think was completed around the time of the installation. This was signed by a representative from P. It was for a system with an output of 2,629kWh. And it set out:*

Feed in tariff	£416
Energy used onsite	£82
Energy exported	£62
Annual cost saving of	£560

The MCS certificate Mr D obtained had a slightly different estimated annual generation of 2,692kWh, which I assume was due to a typographical error on the quote.

Mr D has also supplied some other documents such as warranty and terms, an EPC and some technical information about the panels.

As I've pointed out, Mr D has supplied several documents. Some of the information on the documents is conflicting. And there's been errors made on some of the paperwork that I've highlighted above. I think Mr D was given a lot of information to take on board. Part of that might be down to having to reduce the number of panels. Based on what I've seen, given the number of different figures and outputs Mr D was given, and given the estimated savings figures weren't clearly presented to show the system wasn't self-funding, it's not clear from the paperwork P adequately informed him it wouldn't be.

I've thought about Mr D's testimony as well. He explained that P's representative told him if he were to use the FIT payments to pay additional payments towards the loan the system would be self-funding and that eventually he'd make a profit. He expected his electricity bills to go down, and to have been in a position to pay off the agreement within 7 years based on what P allegedly told him. He said it took a few years to be able to see how the situation was progressing, and he took the decision to pay off the agreement early (in 2018) to reduce the amount of interest he had to pay. He said he didn't complain sooner because he didn't realise he could put in a claim with Creation. His testimony seems credible.

I've also looked at a copy of P's website from May 2013 because Mr D says the financial benefits were discussed. On the main page it states –

*'Embrace the benefits of solar power and renewable energy saving systems.*

- ✓ Tax free
- ✓ High yield
- ✓ No risk
- ✓ Inflation proof
- ✓ Non depreciating asset'

Further down the page there is a section titled 'PV Solar Systems', where the following is stated -

*'The most common sustainable energy product on the market at the moment is the solar PV systems. These create electricity for your home during daylight hours free of charge and give you a tax-free income guaranteed by the government feed in tariff. Yes you get paid for generating energy and it is TAX FREE!'*

And at the bottom of the page there is a section titled 'Finance', which includes –

*'We have calculated a Pay As You Go plan to suit each and every client, so that all the savings and tariffs pay for your new products'*

*I think it follows that if the website emphasises the benefits of a solar panel system, and how they would pay for the products being offered by P it's likely this would have been a central*

*part of P's conversation when selling the product. I think the website also supports Mr D's testimony that P's representative told him the system would pay for itself.*

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

*I think Mr D would have looked to P'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 website supports Mr D's testimony that he was told by P's representative the system would be self-funding.*

*I think it's also important to note the actions taken by the Renewable Energy Consumer Code ('RECC') against P. My understanding is that the RECC oversees the Renewable Energy Consumer Code and makes sure its members comply with it.*

*The RECC investigated P's conduct and informed P of its concerns at the end of April 2014. Significantly RECC had concerns about P using false or misleading information and that pressured sales were taking place.*

*The RECC Panel heard the case and decided the following were proved -*

- allegations consumers had been given misleading information about payment and payback*
- allegations consumers were not given certain technical information before signing the contract*

*So, the Panel decided P breached sections of the code which required members not to provide false or misleading information to consumers, and which concerned members providing clear information so consumers could make an informed decision. Given RECC's concern about P's culture and conduct, it made the decision to terminate P's membership of RECC.*

*Whilst I accept that the above related to findings on different cases the RECC was looking at, and that Mr D was given some technical information from P, the findings suggest that there were conduct concerns in the same areas that Mr D has complained about, at a similar time he was sold his system.*

*Creation has also told this service that following the RECC report it terminated its relationship with P. This is also set out in P's liquidation report produced in June 2016. The report states that mis-selling issues by P were brought up by Creation, which led to it terminating the contract with P and also withholding funds as it expected claims from consumers. I think Creation's actions strongly suggest it had serious concerns about the way P was selling Solar Panels.*

*I'm of the opinion that all of the above information strongly supports Mr D's testimony.*

*Creation hasn't provided evidence to dispute what Mr D said happened. Yet with no prior interest Mr D left the meeting having agreed to an interest-bearing loan, with a monthly repayment of £98.70, payable for 10 years. Given his lack of prior interest and the financial burden he took on I find Mr D's account of what he was told by P, 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 P.*

*For the solar panels to pay for themselves, they would need to produce combined savings and FIT income of over £1,100 per year. Mr D's system looks like it might be slightly overperforming. However, importantly here I don't think the system would provide enough benefit to be self-funding within the term of the loan (or within 7 years) – even though Mr D has mitigated the cost of it by carrying out early settlement. So, these statements were not true. I think P's representative must reasonably have been aware that Mr D'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 P's representative would have known that Mr D's system would not produce enough benefits to cover the overall cost of the system in the timescales stated verbally to Mr D.*

*Considering Mr D's account about what he was told, P's website, RECC's findings, Creation's actions and that it hasn't disputed these facts, I think it likely P gave Mr D a false and misleading impression of the self-funding nature of the solar panel system.*

*I consider P's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr D was expected to receive by agreeing to the installation of the system. I consider that P's assurances in this regard likely amounted to a contractual promise that the solar panel 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 D went into the transaction. Either way, I think P's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr D'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 P's negotiations with Mr D 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 D 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 D'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.*

### Fair compensation

*In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Mr D and Creation's relationship arising out of P's misleading and false assurances as to the self-funding nature of the solar panel system. Our investigator recommended Creation recalculate the agreement as if the system was self-funding within the loan term rather than over the 7 years Mr D said he was promised. Mr D hasn't offered any further substantive responses to our investigator's conclusions. I also note some of the documentation (the energy savings calculator for example) is based over 10 years. I've listened to what Mr D has said about P's comments on bringing down the loan term to 7 years by making overpayments, but I don't have supporting documentation that would indicate he was told the system would be self-funding within 7 rather than 10 years. On balance, taking into account everything I've seen I think the fairest way to resolve things is to use the 10-year estimate that our investigator decided.*

*Therefore, Creation should repay Mr D a sum that corresponds to the outcome he could reasonably have expected as a result of P's assurances. That is, that Mr D's loan repayments should amount to no more than the financial benefits he received for the original term of the loan agreement.*

*Therefore, to resolve the complaint, Creation should recalculate the agreement based on the known and assumed savings and income Mr D 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 D received by way of FIT payments as well as through energy savings. Mr D 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.*

*Finally, I consider that Creation's failure to fully deal with Mr D's s.140A claim or complaint caused Mr D 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 D £100.*

I can't see we received a response from Creation. Mr D responded to say, in summary, he was pleased the complaint was being upheld but he wanted to highlight information not shared before. He supplied hand-written notes he said he made at the time. He said the notes support his assertion he was told the loan could be repaid over 7 years by making overpayments from the electricity savings and FIT payments he'd receive. He said when he realised this wasn't going to happen, he settled the loan.

Mr D said he never expected to be paying the monthly loan payment over 10 years. He said he looked into paying for the system over 7 years using a personal loan, but P told him the Creation loan was the better option because he could overpay without penalty. He said he would have paid much less with the personal loan option.

Mr D supplied a copy of some handwritten notes that set out he could overpay with no penalties and that he could pay it off in 7 years if overpaid after 3 years. It also set out details of the monthly payment and interest applied on a 7-year personal loan with another finance company. This calculates to be for a loan of around £7,635.

## **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 Mr D for his response. It's not clear why the hand-written notes weren't supplied sooner, such as when the complaint was raised with the Creation, or after our investigator sent their assessment. But I understand Mr D perhaps didn't know if they could be considered. It's also not clear why Mr D didn't offer a substantive response to our investigator's assessment. So it's difficult to know how much weight to put on the new submissions. In any event, I've reviewed the submission and I can see it refers to being able to overpay towards the loan, which is true, as it would be for many loans. It also refers to being able to pay off the loan in 7 years if overpaid which, again, was possible.

Details of a 7-year loan with another finance company are also set out in Mr D's submission. Mr D said he didn't take the other loan (even though the interest seems substantially less) because P told him he could overpay the Creation loan without penalty. He hasn't said he took the Creation loan because of the protections and benefits he'd have been afforded by having a connected lender to the purchase. I'm conscious it's likely Mr D could have obtained a loan with another firm he could have overpaid without penalty. And I'm also conscious that even if P told Mr D the loan would be self-funding within 10 years Mr D may have wanted to pay it back even sooner, to make further savings.

Having reviewed the evidence, I'd like to have been more certain that P sold the system as self-funding within 7 years as opposed to the loan term i.e., 10 years. Combined with my findings that I set out in my provisional decision, I think my original directions seem broadly fair based on all the circumstances. So I'm not going to depart from the conclusions I reached.

## **My final decision**

For the reasons I have explained I uphold Mr D's complaint and direct Creation Consumer Finance Ltd to:

- Calculate the total payments (the monthly repayments and settlement payment) Mr D has made towards the solar panel system up until the date of settlement of his complaint – A
- Use Mr D's bills and FIT statements, to work out the benefits he received up until the loan term\* – B
- Use B to recalculate what Mr D should 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 annual interest to any overpayment from the date of each payment until the date of settlement of his complaint\*\* – C
- Reimburse C to Mr D
- Pay Mr D £100 for trouble and upset caused

\*Where Mr D 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 Consumer Finance Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D 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 D to accept or reject my decision before 2 October 2024.

Simon Wingfield

**Ombudsman**