

## **The complaint**

Mr J has complained about Creation Consumer Finance Ltd's ('Creation') 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 140A ('s.140A') of the CCA.

Mr J has been represented in bringing his complaint but, to keep things simple, I'll refer to Mr J throughout.

## **What happened**

In June 2014, Mr J 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 £8,800, the 120 monthly payments are £115.50 and the total amount payable is £13,860.

On 22 March 2022, Mr J sent a letter of claim to Creation explaining he thought the system was mis-sold. He said P told him he'd be paid for the electricity the system generated through the government's Feed in Tariff (FIT) payments and that the system would be self-funding. He said P told him the system would be maintenance free with a 40-year life expectancy and his energy bills would go down.

Mr J said the system was misrepresented and believed the statements and several other actions at the time of the sale created an unfair relationship between himself and Creation.

Creation sent a final response letter 24 May 2024 to say it was dismissing the complaint without consideration because it had been brought out of time. It considered Mr J had brought his claim more than six years after the cause of action occurred under the Limitation Act ('LA').

Unhappy with Creation's response, Mr J referred his complaint to our service on 14 June 2022.

An investigator considered Mr J's complaint on 6 March 2023. They thought that Creation had not misrepresented the solar panels most likely.

Mr J did not accept the assessment. So, the case was progressed to the next stage of our process, an Ombudsman's decision.

I issued my provisional decision in respect of this complaint on 30 September 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 to uphold Mr J'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**

*I'm satisfied I have jurisdiction to consider Mr J'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 J's s.75 claim on 24 May 2022. This relates to a regulated activity under our compulsory jurisdiction. Mr J brought his complaint about this to the ombudsman service on 14 June 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 J. Here the relationship was ongoing at the time it was referred to the ombudsman service on 14 June 2022, 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 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 J.*

*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 J has said he was told by P's representative that the monthly payments and savings he would receive from the solar panels would cover his monthly finance payments and I haven't seen any evidence Mr J had any prior interest in purchasing them.*

*Mr J has said he remembers being given documentation from P. I've looked at the documents Mr J has been able to provide to see if there was anything contained within them that made it clear that the solar panel system wouldn't be self-funding.*

*I've considered Mr J's loan agreement. I'm satisfied it clearly sets out, amongst other things, the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly loan repayments. I think this was set out clearly enough for Mr H to be able to understand what was required to be repaid towards the agreement.*

*I have considered the contract does contain a SAP calculation. That says that the 'Total Savings and Tariffs' could equal £1,204 in year one. The first year repayments on the loan would be £1,386. Our investigator thought that this showed that Mr J should have been aware that the returns from the solar panel system would not cover the cost of the loan. Mr J was disappointed with that finding, as he explained that he was told by more than one sales representative for P that the loan would be self-funding.*

*I also note that the SAP calculation also says that 'The performance of Solar PV systems is impossible to predict with certainty due to the variability in the amount of solar radiation (sunlight) from location to location and from year to year. The estimate is based on the government's standard assessment procedure for energy rating of buildings (SAP) and is given as guidance only. It should not be considered as a guarantee of performance.'*

*I also note that the SAP figures refer to the first year performance and not the life of the loan. I would need more information from P to understand how these figures were presented to Mr J at the time of the sale, mostly likely. And, in this case, I have some such evidence to consider.*

*I've looked at P's website from around the time of the sale. The nearest cache of the website before the sale is 11 October 2013. I am satisfied, it is reasonable to take this content into account when considering what's more likely than not to have been said to Mr J. 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 J's testimony that P's representative told him the monthly payments and savings he would receive would cover his monthly finance payments.*

*So, I find what Mr J's 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 J 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 J's testimony that he was told by P's representative the system would be self-funding.*

*Important to note here are 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 that its members comply with it.*

*The RECC investigated P's conduct and informed P of its concerns in 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 was in breach of Section 5.2 of the code (which required members not to provide false or misleading information to consumers) and Section 5.3 (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 is findings on different cases the RECC was looking at, the findings suggest that there were conduct concerns in the same areas that Mr J has complained about, at a similar time he was sold his system.*

*I think it important to highlight the following points the panel considered in its decision:*

- 'The Regulator was particularly uncomfortable with the fact that so many consumers appeared not to understand the benefit of the system sold. They were told one thing but the reality was different'*
- 'There is a large volume of complaints with a consistent theme that suggest that some consumers have been given false or misleading information before signing contracts. ... The Panel decided that a fundamental cultural change was needed within the company.... Given the duration, seriousness and breadth of the breaches upheld... [P's membership of RECC] should be terminated.'*

*Creation have 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 available on companies house. 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 under s.75. 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 J's testimony.*

*Creation hasn't provided evidence to dispute what Mr J's said happened. Yet with no prior interest Mr J left the meeting having agreed to an interest-bearing loan, with a monthly repayment of £115.50, payable for 10 years. Given his lack of prior interest and the financial burden he took on I find Mr J'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 around £1,386 per year. I have not seen anything to indicate Mr J's system was not performing as expected but Mr J's system did not produce sufficiently to meet the loan repayments.*

*So, the statements made by P were not true. I think P's representative must reasonably have been aware that Mr J'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 J's system would not produce enough benefits to cover the overall cost of the system in the timescales stated verbally to Mr J.*

*Considering Mr J's account about what he was told, and the documentation he was shown at the time of the sale, P's website, RECC's findings, Creation's actions and the fact it hasn't disputed these facts, and in the absence of any other evidence from Creation to the contrary, I think it likely P gave Mr J a false and misleading impression of the self-funding nature of the solar panel system. On balance, I find Mr J's account to be plausible and convincing.*

*I consider P's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr J 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 J went into the transaction. Either way, I think P's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr J'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 J 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 J 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 J'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 J and Creation's relationship arising out of P's misleading and false assurances as to the self-funding nature of the solar panel system. Creation should repay Mr J a sum that corresponds to the outcome he could reasonably have expected as a result of P's assurances. That is, that Mr J's loan repayments should amount to no more than the financial benefits he received for the duration of the loan agreement.*

*Therefore, to resolve the complaint, Creation should recalculate the agreement based on the known and assumed savings and income Mr J 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 J received by way of FIT payments as well as through energy savings. Mr J will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to Creation. Mr J told us he had never received FIT payments. So, Creation will need to use that information in its calculation of fair compensation.*

*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 J's complaint in a reasonable timeframe, with minimal communication, caused Mr J 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 J £100.*

*For the reasons I have explained I uphold Mr J's complaint. To put things right Creation Consumer Finance Ltd must:*

- *Calculate the total payments Mr J has made towards the solar panel system up until the date of settlement of his complaint – A*
- *Use Mr J's bills and FIT statements, to work out the benefits he received up until the loan term\* – B*
- *Use B to recalculate what Mr J 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 J*
- *Pay Mr J £100 for trouble and upset caused*

*\*Where Mr J 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 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 J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate."*

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 14 October 2024. Mr J has accepted my provisional findings. Creation has not acknowledged the provisional decision, made a further submission or asked for an extension to do so.

I think that both parties have had time sufficient to have made a further submission had they wished to do so. So, I am 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.

So, as neither party has provided any new information or argument 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 (above) for upholding Mr J's complaint, I have nothing further to add.

So, having looked again at all the submissions made in this complaint, I am upholding Mr J's complaint and require Creation to calculate and pay the fair compensation detailed above.

### **Putting things right**

For reasons given above, I require Creation to calculate and pay the fair compensation detailed above

### **My final decision**

For the reasons set out, I'm upholding Mr J's complaint about Creation Consumer Finance Ltd. I require Creation Consumer Finance Ltd to calculate and pay the fair compensation as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 13 November 2024.

Douglas Sayers  
**Ombudsman**