

The complaint

Mrs T 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 in to account section 140A (“s.140A”) of the CCA.

Mrs T has been represented in bringing her complaint but, to keep things simple, I’ll refer to Mrs T throughout.

What happened

In November 2014 Mrs T entered into a fixed sum loan agreement with MHCC to pay for a £6,500 solar panel system (“the system”) from a supplier I’ll call “S”. The total amount payable under the agreement was £9,694.80 and it was due to be paid back with 120 monthly repayments of £80.79.

In December 2021 Mrs T sent a claim and complaint letter to MHCC explaining she thought the system was mis-sold. She said S told her she’d effectively 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 within the loan term. She said S explained her energy bills would go down; she’d receive a guaranteed income for 20 years; and the system was maintenance free with a 40-year life expectancy. She said the system was misrepresented and believed statements and several other actions at the time of the sale created an unfair relationship between herself and MHCC.

MHCC sent a response in December 2021 saying it thought the claim had been brought too late. It said there was no evidence it didn’t comply with all relevant law, and that the documents provided clearly set out the cost and full financial information. MHCC said there was no suggestion Mrs T didn’t understand what she was signing up to and that she’d benefitted from the FIT payments. It also said she’d continue to benefit from FIT payments for a further 13 years and energy savings for the full lifespan of the system (usually 25 years). It said it didn’t consider the relationship unfair. MHCC also set out no commission had been paid and that its decision to lend was responsible.

Unhappy with the response, Mrs T referred her complaint to the ombudsman service in March 2022.

MHCC sent a final response in November 2022 reiterating what it had said in its response to the claim.

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 T 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 T 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 T's claim under s.140A.

Mrs T 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 T's allegations of an unfair relationship don't relate to any events post-dating the sale of the system in November 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 in our jurisdiction. Neither party has supplied material evidence for why that's not right, so I'm not going to repeat it here. 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 T.

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 T says she was verbally misled that the system would effectively pay for itself. I've taken account of what Mrs T 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 T to be able to understand what was required to be repaid towards the agreement. But it doesn't set out what savings Mrs T 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 sets out the cost of the system and details of the installation. I've also seen a satisfaction note Mrs T signed.

Mrs T has supplied a copy of an annual payments calculator. This sets out details of the system Mrs T purchased. And it has columns setting out yearly: annual bill without solar; electricity savings @15.38p; export 50% @ 4.77p; feed in tariff @ 14.38p; funding repayment; and annual cost/saving. The table shows Mrs T's costs and savings would increase each year. And it shows the funding repayment of £969 annually for 10 years. The form indicates Mrs T's system would be self-funding within the loan term. Given, as I'll come on to explain, I don't think it was, I think this form was misleading.

MHCC wrote to us to explain it didn't think the form was one that was used by S. The form had another firm's details on it who I'll call "E". I arranged to ask Mrs T about this. She explained "The estimate document was shown and given to me by the representative of [S] (I can still remember him sat on my sofa). I still have the original folder he brought with him, inside that is reference to [E]. I understood that was where they received the forecast/information from but [S] were the installers of the actual panels".

I'm not totally clear why S was using a form from E, particularly when MHCC has seen other forms that S used itself. But I think Mrs T's account of what she was told seems credible. I'm not sure how else she'd have ended up with E's form if she was only dealing with S. The form sets out the correct system price, monthly payments and so on.

I've looked at S's website from around the time Mrs T took out the system. It doesn't explicitly say systems are sold as self-funding with the loan term, but I can see there's a section on the website that sets out Earn thousands on your investment and there's a table setting out the year; £s saved this year; Total £s saved, and the savings increase year on year. The first six-year total savings are highlighted red, and from year seven to twenty they're highlighted green. So, while not definitive, this could also support Mrs T's allegations that the system was sold as an investment that would earn her thousands, and that it could have been sold as self-funding within the loan term.

I've also thought about Mrs T's testimony. She said prior to speaking to S she didn't know anything about solar panels and didn't have any thoughts on them. She said the motivation in buying the system was from the salesperson's pitch. She said S sold the system as though it would pay for itself and that the benefits would cover the finance payments.

I've not seen anything to indicate Mrs T had an interest in purchasing solar panels before S contacted her. I'm mindful it would be difficult to understand why, in this particular case, Mrs T would have agreed to the installation if her monthly outgoings would increase. 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 over £950 per year. I've not seen anything to indicate there's a problem with the system. It looks like it's slightly overperforming. But I've also not seen anything to suggest Mrs T 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 T's account about what she was told; the website; and the documentation from the point of sale, I think it likely S gave Mrs T 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 T 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 T went into the transaction. Either way, I think S's assurances were seriously misleading and false, undermining the purpose of the transaction from Mrs T'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 T 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 T 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 T'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 T 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 T a sum that corresponds to the outcome she could reasonably have expected as a result of S's assurances. That is, that Mrs T'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 T's expectation of what she would receive. I consider Mrs T 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 T.

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 T received (or will receive) 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 T received by way of FIT payments as well as through energy savings. Mrs T will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to MHCC. Seeing as though I think MHCC did broadly respond to the various claims raised, I'm not proposing it needs to pay further compensation.

Mrs T accepted the provisional decision. MHCC said it wasn't going to challenge it.

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.

Seeing as though neither party has submitted anything materially new for me to consider, I see no reason to depart from the conclusions I reached in my provisional decision.

My final decision

For the reasons I have explained I uphold Mrs T's complaint and direct Mitsubishi HC Capital UK Plc to:

- Calculate the total payments Mrs T has made towards the solar panel system – A
- Use Mrs T's bills and FIT statements to work out the benefits she received from the start date of the loan, up until the date of settlement* – B
- Use B to recalculate what Mrs T 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 T
- If required, use Mrs T's bills and FIT statements to work out the benefits she will receive for the period between the settlement of her complaint and the end of the original loan term – D
- Rework the loan so that the remaining balance is D and recalculate the remaining monthly payments equally over the remaining term of the loan or allow Mrs T to continue with her current payment so the loan finishes early.

*Where Mrs T 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 T how much it's taken off. It should also give Mrs T 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 T to accept or reject my decision before 14 November 2024.

Simon Wingfield
Ombudsman