

## **The complaint**

Mrs A has complained about the way Mitsubishi HC Capital UK Plc (“MHCC”) responded to claims she’d made in relation to an alleged unfair relationship taking into account section 140A (“s.140A”) of the Consumer Credit Act 1974 (the “CCA”).

Mrs A has been represented in bringing her complaint but, to keep things simple, I’ll refer to Mrs A throughout.

## **What happened**

In November 2014 Mrs A entered into a fixed sum loan agreement with MHCC to pay for a £5,659 solar panel system (“the system”) from a supplier I’ll call “S”. The agreement was for 10 years, and Mrs A was due to pay 120 instalments of £70.34. The total amount payable under the agreement was £8,440.80, which included £2,781.80 of interest.

I understand Mrs A settled the loan early in November 2022.

In March 2023 Mrs A put in a claim with MHCC. She said S cold called her and persuaded her to have a sales meeting at her home. She said S made several misrepresentations, the main one being that the system would be self-funding. She said S told her the electricity generated by the system would lead to her being paid feed in tariff (FIT) payments. She said S told her she’d make significant savings on electricity bills. She said S told her the benefits would cover the loan payments. Mrs A said she wasn’t given enough time to go through the paperwork. Mrs A said she’d calculated her monthly shortfall through the system as being around £35.

MHCC sent a final response letter in April 2023 to say it was rejecting the complaint without consideration because it had been brought out of time. Mrs A referred her complaint the complaint to the Financial Ombudsman in May 2023.

One of our investigators looked into things and said she’d not seen any documents from the point of sale which set out the benefits Mrs A could expect. She said due to the length of time it was difficult for Mrs A to recall the sales process. She noted Mrs A didn’t contact S to raise any concerns when she didn’t receive the benefits promised. She said the system seemed to be performing as expected. She noted it took Mrs A nearly nine years to raise her concerns with MHCC. She didn’t make any recommendations.

Mrs A said she didn’t agree with the outcome. She said it was widely accepted solar panel systems were routinely misrepresented. She said she was misled when she took out the agreement, and it wouldn’t have made sense to buy the system if it wouldn’t be self-funding. The complaint has been passed to me to decide.

## **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**

### The unfair relationship under s.140A complaint

The event complained of here is MHCC's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mrs A. Here I understand the relationship ended in November 2022, and Mrs A put in her claim and referred her complaint to the Financial Ombudsman in 2023. 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 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 was responsible under s.56 when considering whether it is likely MHCC had acted fairly and reasonably towards Mrs A.

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 A says she was verbally misled that the system would effectively pay for itself. So I've taken account of what Mrs A 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 A to be able to understand what was required to be repaid. She also had a period she was able to withdraw if she was unhappy with anything.

I've looked at the other documentation from the point of sale Mrs A has been able to supply. She's shown us a terms and conditions and guarantee document; a receipt; MCS certificate; and a handover certificate. But none of the documentation I've seen clearly set out the estimated benefits Mrs A was likely to receive through having the system installed. So it's not clear how she'd be able to compare her overall costs to the benefits she'd likely receive.

Our investigator decided to speak to Mrs A to find out more about the sale. Mrs A explained she'd made an enquiry about solar panels, S sold the system as being self-funding, and that she'd make savings on her electricity which wasn't the case. Mrs A reiterated she wasn't

given any point of sale documentation that set out the estimated benefits, only the documentation I've referred to above.

Mrs A said she was told the system would provide benefits of around £800 to £900 annually. She said she was told it should pay itself off after five years and that it would be self-funding within that term. She said S told her she'd be paid through FIT. Our investigator wanted to know more about her recollection, but she explained it was a long time ago so couldn't recall how S presented things. She said she never thought about complaining at the time. She also gave some other details about her circumstances in that she was working full time with no dependents at the time she bought the system.

For this particular case, I'd like to have been more certain S misled Mrs A about the benefits of the system. While I appreciate it may be hard for Mrs A to clearly recollect everything she was told so long ago, the testimony is slightly conflicting. On the one hand, in her letter of claim she said she was told the system would be self-funding within the loan term i.e., 10 years. But when our investigator spoke to her, she said she was told it would pay for itself within five years. She said S told her she'd receive benefit of around £800 - £900 per year, but this wouldn't have cleared even the cash price of the system within five years. So I think had S presented the deal in this way, I'd have expected Mrs A to have queried it straight away given the fixed sum loan is set out clearly. She also said in her letter of claim she was cold called, but then later said she'd made an enquiry with S.

Moreover, Mrs A hasn't provided substantive comments on why she didn't complain sooner. If she was told the agreement would be self-funding within five years, it's not clear why it took over eight years for her to put in the claim. I've also not been able to find any other compelling evidence from around the time of the sale that supports Mrs A's allegations.

I appreciate Mrs A said she thinks solar panel systems were routinely mis-sold. But I do need to consider each case on its own individual merits. Having very carefully thought about what we've been told, on balance, I don't think there's sufficient grounds to uphold the complaint. I'm therefore not going to make any directions.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 20 November 2024.

Simon Wingfield

**Ombudsman**