

## **The complaint**

Mr M has complained about the way Creation Consumer Finance Ltd (“Creation”) responded to claims he’d made in relation to an alleged unfair relationship taking into account section 140A (“s.140A”) of the Consumer Credit Act 1974 (the “CCA”).

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

## **What happened**

In June 2014 Mr M entered into a fixed sum loan agreement with Creation to pay for a £7,995 solar panel system (“the system”) from a supplier I’ll call “G”. The total amount payable under the agreement was £12,402.48 and it was due to be paid back with 120 monthly repayments of £103.35. There was interest of £4,407.48. I understand Mr M paid off the agreement early in May 2020.

Mr M raised a section 75 claim in July 2022 because he thought the system was mis-sold. This claim was declined as Creation said it had been brought out of time. Mr M raised a further claim in March 2023 saying he thought the system was misrepresented and believed the statements and actions at the time of the sale created an unfair relationship between himself and Creation. He said G told him the system would be self-funding within the loan term, but he’d found out it wasn’t.

Creation responded to say the complaint didn’t include enough detail for it to conclude misrepresentations took place. It said notwithstanding that any claim for misrepresentation had been brought out of time, there was insufficient evidence. It said the claim under s.140A didn’t advance the case further beyond the underlying cause of action – the misrepresentation. But it invited Mr M to provide a witness statement.

Unhappy with Creation’s response, Mr M asked the Financial Ombudsman to investigate.

One of our investigators looked into things and didn’t think the complaint had been brought in time so he made no recommendations.

Mr M didn’t agree. He said he was unaware there may have been an unfair relationship. He also highlighted the system had underperformed which provides clear evidence some of G’s representations were false and that there was an unfair relationship.

I issued a provisional decision setting out why I thought the complaint had been brought in time. I can’t see either party has objected so I’m not going to set that out again. 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 G 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 G 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 G for which Creation was responsible under s.56 when considering whether it is likely Creation had acted fairly and reasonably towards Mr M.*

*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 M says he was verbally misled that the system would effectively pay for itself. So I've taken account of what Mr M says he 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 Mr M to be able to understand what was required to be repaid towards the agreement.*

*Mr M has only been able to supply limited documentation from the point of sale. He's shown us a receipt and an MCS certificate; a guarantee document; and FIT plan information. But none of those documents set out the estimated benefits Mr M was likely to receive from having the system installed. So I've not seen there was an easy way for Mr M to compare his overall costs to the benefits he'd likely receive.*

*Mr M also told us more about the sale of the system. He said he believes G showed him documents with figures suggesting the benefits would cover the monthly payments, but he wasn't given anything to keep apart from the MCS certificate. He said he did raise the issue with G but didn't receive a response. And he said it was only more recently he found out he could bring the claim against Creation. Mr M said he had no interest in solar panels before speaking to G, and only proceeded for the financial benefits and savings. He said at the time he wasn't able to put savings away. I'm mindful it would be difficult to understand why, in this particular case, Mr M would have agreed to the installation for such a high upfront cost if he wasn't going to recoup that money within the time stated.*

*I've also looked at G's website from around the time Mr M bought the system. I can see there's a section that said:*

*If you can afford to buy your solar panels upfront (finance options available), it's better to own your system. You'll get 100% of the income generated from creating your own green electricity through the Feed in Tariff. You can also consider a loan for solar panels, as the profit from the electricity should cover the repayment amounts – and leave you with money to spare.*

*I think it follows that if the website from around the time emphasises the benefits of a solar panel system and that it should cover the loan repayment amounts this was likely a central part of the conversation between G and Mr M. I think this also supports Mr M's testimony that if he bought the system with finance it would pay for itself.*

*For the solar panels to be self-funding, they'd need to produce a combined savings and FIT income of around £1,250 per year. But I've not seen anything to suggest Mr M 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. 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 Mr M's account about what he was told, the documentation; the information on G's website, and that Creation hasn't disputed these facts, I think it likely G gave Mr M a false and misleading impression of the self-funding nature of the system.*

*I consider G's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr M was expected to receive by agreeing to the installation of the system. I consider that G'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 Mr M went into the transaction. Either way, I think G's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr M's point of view.*

*Would the court be likely to make a finding of unfairness under s.140a*

*Where Creation is to be treated as responsible for G's negotiations with Mr M 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 M 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.*

*Fair compensation*

*In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Mr M and Creation's relationship arising out of G's misleading and false assurances as to the self-funding nature of the solar panel system. Creation should repay Mr M a sum that corresponds to the outcome he could reasonably have expected as a result of G's assurances. That is, that Mr M'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 M 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 M received by way of FIT payments as well as through energy savings. Mr M will need to supply up to date details 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.*

I can't see either party has submitted any new evidence.

### **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 I can't see either party has submitted anything 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, my final decision is that I uphold Mr M's complaint and direct Creation Consumer Finance Ltd to:

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

\*Where Mr M is unable 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 M how much it's taken off. It should also give Mr M 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 M to accept or reject my decision before 13 December 2024.

Simon Wingfield  
**Ombudsman**