

## **The complaint**

Mr J has complained about the way Creation Consumer Finance Ltd (“Creation”) responded to claims he made in relation to misrepresentation, breach of contract, and an alleged unfair relationship taking into account section 140A (“s.140A”) of the Consumer Credit Act.

Mr J has been represented by a third party in bringing his complaint but, to keep things simple, I’ll refer to Mr J throughout.

## **What happened**

In September 2013, Mr J entered into a fixed sum loan agreement with Creation to pay for a solar panel system (“the system”) from a supplier I’ll call “G”.

In July 2021, Mr J sent a letter of claim to Creation explaining that he thought the system was mis-sold. He said G told him he’d be paid for the electricity the system generated through the government’s Feed in Tariff (FIT) payments and that he would receive guaranteed income for 20 years. He also said G told him his property value would increase, his energy bills would reduce, and the system would be maintenance free with a 40-year life expectancy.

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 in October 2021 to say they were dismissing the complaint without consideration because it had been brought out of time.

Mr J wasn’t happy with Creation’s response, so he referred his complaint to our service in January 2022.

One of our investigators looked into what had happened. She thought G had led Mr J to believe the system was self-funding and that their documentation didn’t clearly set out it wasn’t. She didn’t think the system was self-funding over the course of the loan term, and so she thought G had misrepresented it. Our investigator thought a court would likely find the relationship between Mr J and Creation was unfair and that he’d suffered a loss through entering into the agreement. She thought Creation should recalculate the loan based on known and assumed savings and income over the course of the loan so that Mr J pays no more than that, and that he keeps the system. She also recommended £100 compensation for the impact of Creation not investigating the s.140A claim.

Mr J accepted the view.

Creation didn’t reply, so as things remained unresolved, the complaint was passed to me for a decision.

I issued my provisional decision on 5 December 2024, relevant extracts of which I include below.

*‘Jurisdiction to look at the “Section 75” complaint*

*Where Creation exercises its right and duties as a creditor under a credit agreement, they are carrying out a regulated activity within the scope of our compulsory jurisdiction under Article 60B(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. In undertaking that activity, the creditor must honour liabilities to the debtor. So, if a debtor advances a valid claim under section 75 of the Consumer Credit Act 1974 ("s.75") in respect of the credit agreement, the creditor has to honour that liability and failing or refusing to do so comes under our compulsory jurisdiction.*

*Creation argues that the event complained of when the matter is brought to our service occurred as and when the supplier caused the alleged s.75 liability to arise in the first place. I disagree with this though. The lender's s.75 liability in damages doesn't arise as a result of any act or omission of the lender in performing a regulated activity – it's simply a claim given by statute to the borrower against the lender. And it arises from the acts or omissions of a third party, the supplier. Only when and if that claim is presented by the borrower to the lender must the lender do anything about it, which is to honour its statutory liability by paying the claim if it's a valid one. Until then, the lender's acts and omissions are simply to have lent money to the borrower at the borrower's request, and that's not the matter complained about.*

*So, when a borrower brings a complaint to our service alleging that they were due money under s.75 when the lender refused to pay, "the event complained of" in such circumstances isn't the supplier's conduct; it's the lender's refusal to honour its alleged statutory liability when the borrower made the claim.*

*In this case, Creation rolled up their consideration of Mr J's claim into a letter that explained why it wouldn't be paying the claim and treated Mr J as having brought a complaint which he was entitled to refer to our service. So, their refusal to accept and pay the s.75 claim was contained in a final response letter of 22 October 2021, in which they told Mr J he could refer his complaint to our service within six months.*

*In those circumstances, because Creation's letter rejected Mr J's claim under s.75, it constituted "the event complained of". It also set out Creation's response to any complaint that flowed from this and invited Mr J to refer that complaint to our service if he was dissatisfied with the outcome. Creation could have separated those stages, waited for Mr J to complain that the s.75 claim hadn't been accepted and honoured, and only then issued their final response letter. Instead, they followed the same practice that many other lenders adopt by allowing Mr J to refer the matter directly to the ombudsman service, by way of treating it as a complaint. And Mr J referred his complaint to us in January 2022, which was within the six months given in Creation's final response letter.*

*I note that Creation in their submissions to us referred to DISP 2.8.2R. However, the fact that Creation refused to accept the s.75 claim within a final response letter doesn't give rise to any difficulties calculating when time begins to run under DISP 2.8.2R.*

*Merits of the s.75 complaint*

*The law imposes a six-year limitation period on claims for misrepresentation and breach of contract, after which they become time barred.*

*In this case, the alleged misrepresentation and alleged breach cause of action arose when an agreement was entered into in September 2013. Mr J brought his s.75 claim to Creation in July 2021. That is more than six years after he entered into an agreement with them.*

*Given this, I don't think it was unfair for Creation not to have accepted the s.75 claim. So, I don't uphold this aspect of the complaint.*

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

*Our investigator thought that a court would likely find the relationship between Mr J and Creation was unfair. However, I'm afraid I don't currently agree with this.*

*In the context of this complaint, the law relating to unfair relationships is described in s.140 of the Consumer Credit Act 1974. It says a court may make an order under s.140 if it determines a relationship between the creditor and the debtor is unfair. The consumer is the debtor and s.140 defines the creditor as "the person to whom his rights and duties under the agreement have passed by assignment or operation of law".*

*We've been told that Creation sold Mr J's debt to a debt purchaser, and that this happened in April 2016. Bearing in mind my comments above around how s.140 is set out, it follows that the debt purchaser is now the creditor for the purpose of the credit agreement. Mr J sent his letter of claim to Creation after the debt was sold and I don't believe that a claim about an unfair relationship can be brought by him against them as they were no longer the creditor when he made that claim.*

### *My provisional decision*

*For the reasons I've set out above, I don't uphold this complaint'.*

I invited both parties to provide me with any further evidence or comments that they wanted me to consider. Neither party have replied by the time I allowed for responses.

### **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.

As I've not been provided with anything further to consider, I see no reason to depart from the provisional decision I reached. So, for the reasons I gave in that decision, which I have included above, I won't be upholding this complaint.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 21 January 2025.

Daniel Picken  
**Ombudsman**