

The complaint

The estate of Mr S complains about Creation Consumer Finance Ltd's (Creation) response to its claim brought under section 75 Consumer Credit Act.

What happened

In December 2014 Mr S purchased solar panels from a supplier I'll call M for £9,105. He paid a deposit of £100 and the remainder was financed with a fixed sum loan from Creation which was entered into in January 2015.

Creation's notes say that in March 2021 Mr S brought a claim to Creation saying the solar panels had been mis-sold to him by M. He said he signed up to buy them before he even knew what he'd agreed to, was not in the process of looking for solar panels and had received no benefit from them.

Sadly, Mr S passed away later in 2021. The complaint was taken on by his estate. Creation treated the claim as a complaint and issued a final response letter in November 2021. It said the complaint had been brought more than six years after the sale of the solar panels so considered it had been referred out of time under the regulator's complaint handling rules.

Dissatisfied with this, the estate of Mr S referred its complaint to this service.

I issued a provisional decision in January 2025 explaining why I didn't plan to uphold the complaint. I said the following:

"S.75 complaint

Creditors have no means of knowing what s.75 liabilities they may have, nor of investigating such liabilities nor of recovering them from suppliers, unless or until debtors raise s.75 claims against them; and raising the claim, if it's a valid one, brings the creditor under a duty then to honour its liability.

But it would not be fair or reasonable to require a creditor to respond to s.75 claims however long in the past they arose. And our service must decide complaints on the basis of what is fair and reasonable in all the circumstances of a case.

The law imposes a six-year limitation period on the relevant claims, after which they become time barred.

Based on the alleged misrepresentations, the cause of action in this case arose when an agreement was entered into in January 2015. The alleged breach of contract isn't defined but I take it to be that M (acting on behalf of Creation) warranted that the solar panel system it agreed to provide had the capacity to finance the loan repayments, when that was incorrect. As such, the alleged breach of contract also occurred as soon as the agreement was entered into.

In these circumstances Mr S had brought his s.75 claim to Creation in March 2021 which is more than six years after he entered into an agreement with it in January

2015.

Where it is unlikely a claim against the supplier could succeed due to the expiry of the likely relevant limitation periods of six years, as appears to be the case here, I am persuaded that it was fair and reasonable for Creation to decline the s.75 claim. So, I do not uphold this aspect of the complaint.

Unfair relationship complaint

The estate of Mr S is able to make a complaint about an unfair relationship between it and Creation per s.140A CCA. The event complained of is Creation's participation, for so long as the credit relationship continues, in an allegedly unfair relationship with it. The credit relationship continues in this case as the obligations to repay under the loan agreement sit with the estate of Mr S now.

I can consider representations and contractual promises by M when considering a complaint about an unfair relationship between Mr S and Creation. s.56 of the CCA has the effect of deeming M to be the agent of Creation in any antecedent negotiations, and so Creation is responsible for the antecedent negotiations M carried out direct with Mr S.

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 unfair relationship those negotiations and arrangements by M for which Creation was responsible under s.56 when considering whether it is likely Creation had acted fairly and reasonably toward the estate of Mr S.

When speaking to our investigator the representative of Mr S's estate said Mr S wouldn't have understood how to get money from the solar panels (such as how to claim FiT payments) to pay for the loan and this was never explained to him by M. He said he doesn't believe Mr S would have bought the solar panels if he'd been told the monthly benefits generated would not meet the loan repayments over the course of the loan agreement.

I've looked first at the paperwork the estate of Mr S has provided to see if it was made clear what benefits the solar panels would generate and how these would compare with the monthly loan repayments. It's clear from the loan agreement how much Mr S was borrowing, what the monthly repayments would be and how long he'd have to make them for.

What's not so clear from the paperwork is what benefits the solar panels would generate and how they measured up against the loan repayments. A document titled 'estimated returns' gives an 'estimated year 1 benefit' a 'total estimated 20 year FiT benefit' a 'total estimated 25 year energy savings benefit' and a 'total lifetime PV system benefit'. While it's fairly clear from this the benefits in year one would not be as much as the total loan repayments in that year, the rest of the estimates all appear to use different metrics, and I don't find the estimate provides information in a clear enough way that would at the very least have enabled Mr S to work out the estimated benefits himself so he could measure these against the monthly loan repayments over the life of the agreement.

It seems likely therefore that Mr S would have needed to rely on what he was told about the solar panels by the representative of M to get a good understanding of the benefits of the panels over the course of the loan agreement.

The investigator thought it was unlikely Mr S would have bought the solar panels if he'd been told they wouldn't be self-funding over the course of his loan as the loan repayments would have significantly increased his monthly outgoings and he wasn't looking for solar panels when M contacted him. So, he thought Mr S must have been told that they were self-funding. However, I haven't reached that same conclusion.

Most of the testimony that has been provided about what Mr S was told is that of the representative of the estate and not Mr S. And sadly, it's impossible to get Mr S's testimony now that he has passed away. As a result, (and entirely understandable in the circumstances) the available testimony is not particularly rich in detail and relies quite heavily on what the representative considers Mr S would or wouldn't have agreed to. Because of this however I'm not able to give the kind of weight to the available testimony that I would if it had come directly from Mr S. This poses significant challenges to the estate of Mr S's complaint as it essentially hinges on what Mr S was or was not most likely told about the benefits of the solar panels.

I appreciate the representative of Mr S's estate has said he was not tech savvy and would not have understood how to claim things like FiT payments. I don't think it automatically follows however that M didn't explain how to register for these payments - even if as appears to be the case, Mr S did not indeed register for them. Again, without direct testimony from Mr S it's very difficult to know what he would or would not have been told in this respect.

Overall, I've not seen enough in this particular case to persuade me on the balance of probabilities that Mr S would have been told the benefits of the solar panels would have paid for the loan repayments over the course of the loan agreement or that things such as claiming FiT payments were not explained to him. It therefore seems unlikely to me that the estate of Mr S's relationship with Creation is unfair as a result of a misrepresentation or contractual promise made by M to Mr S when the solar panels were sold to him. Creation does (not) therefore need to do anything in respect of the estate of Mr S's complaint.*

I know this will come as a disappointment to the representative of Mr S's estate in the circumstances."

*my correction

Creation agreed with my provisional decision and had nothing further to add.

The estate of Mr S did not agree. It said in summary:

- Its complaint is mostly about M rather than Creation and how it sold the solar panels to Mr S.
- It believes it started the complaints process much earlier than stated in my provisional decision.

The complaint has therefore been passed back to me for a 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.

I've very carefully considered the comments provided by the estate of Mr S in response to

my provisional decision. I appreciate it believes its complaint rests more with M. However, as the estate has identified, M is no longer trading so it cannot refer a complaint about it to this service. It would likely have run into difficulties with time limits in any event in the circumstances.

My consideration of this complaint is therefore limited to Creation's acts and omissions in respect of the complaint that has been brought, which I laid out in the headings in the extract of my provisional decision above.

I've examined Creation's record of contact with Mr S and his estate. There is no record of a complaint having been made any earlier than March 2021. I've seen no other persuasive evidence that one was referred to Creation any sooner than this. My findings in respect of the estate's claim under s.75 therefore remain that Creation did not unreasonably decline to meet it – the estate having notified Creation of its claim more than six years after its cause of action.

I've also seen no reason to depart from the findings I made in my provisional decision about the fairness of the credit relationship. As I explained therein, the complaint turns largely on what happened when M sold the solar panels to Mr S in 2015. The available paperwork did not guarantee that the benefits the solar panels were expected to generate would pay for the loan repayments on the loan agreement. So, testimony as to what was explained to Mr S by M at the time is key. It's very unlikely that Creation would have been able to obtain testimony from M because it ceased trading. And sadly, Mr S is unable to give testimony either. I haven't found the representative of the estate's recollections or suggestions persuasive enough on their own to conclude the solar panels were mis-sold to Mr S. He wasn't present when the pre-contract negotiations took place and the recollections are not sufficiently detailed.

It remains my decision therefore that Creation need not do anything in respect of the estate of Mr S's complaint.

My final decision

For the reasons I've explained above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr S to accept or reject my decision before 4 March 2025.

Michael Ball
Ombudsman