

## The complaint

Mr B has complained about the way Allium Money Limited (“Allium”) 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 B has been represented in bringing his complaint but, to keep things simple, I’ll refer to Mr B throughout.

## What happened

In July 2021 Mr B entered into a fixed sum loan agreement with Allium to pay for a £13,866.30 solar panel system (“the system”) from a supplier I’ll call “S”. The total amount payable under the agreement was £23,251.10 and it was due to be paid back with 180 monthly repayments of around £130. Mr B also paid a £100 deposit.

In May 2022 Mr B sent a letter of claim to Allium explaining he thought the system was mis-sold. He said he saw an advert for S to arrange a quote and that during the sales meeting S told him the system would pay for itself and ‘provide several hundred pounds annually’. He said the statements were misleading and he’d received less benefit than he was led to believe. He said the savings didn’t come close to covering the loan payments even when taking into account the electricity savings. S and Allium responded to the claim in 2022. Allium considered its responsibilities under section 75 (“s.75”) of the CCA but didn’t uphold the claim.

In 2023, Mr B contacted Allium again. He said the misleading way S sold the system created an unfair relationship between himself and Allium. So he asked it to consider a separate claim and complaint under s.140A. Allium referred back to its response in relation to Mr B’s claim of misrepresentation in 2022.

Mr B decided to refer his complaint to the Financial Ombudsman.

One of our investigators looked into things and didn’t ultimately conclude Allium needed to take any action. He didn’t think there was sufficient evidence to show S misled Mr B given the paperwork he’d signed.

Mr B didn’t agree. He said he signed the contract on a tablet and wasn’t given all the information our investigator referred to. He said S had used incorrect figures in its calculations which over-estimated the savings Mr B would likely make from the system. He also said the estimates S used for the expected increases in utility prices should have been more up to date.

I issued a provisional decision that said:

*Where Allium exercised its rights and duties as a creditor under a credit agreement it’s carrying out a regulated activity within the scope of our compulsory jurisdiction to consider. Mr B has complained Allium participated in an alleged unfair relationship. Mr B bought the system using a fixed sum loan agreement. I’m satisfied we can consider complaints such as Mr B’s relating to these sorts of regulated consumer credit agreements.*

*Mr B has referred to the alleged unfair relationship when setting out his 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 Allium 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 Allium was responsible under s.56 when considering whether it is likely Allium had acted fairly and reasonably towards Mr B.*

*But in doing so, I should take into account all the circumstances and consider whether a court would likely find the relationship with Allium was unfair under s.140A.*

#### *What happened?*

*Mr B says he was misled about the financial benefits he could expect from the system. So I've taken account of what Mr B says he was told and shown. 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 B to be able to understand what was required to be repaid towards the agreement. But it doesn't set out any of the estimated benefits of the system.*

*S also gave Mr B a contract and quote. The quote and contract are detailed documents that set out key information about the system, the expected performance of it, as well as the financial benefits and certain technical information. S said this formed a central part of the sales process and that the salesperson would've discussed it in detail with Mr B prior to him agreeing to enter into the contract. Given the forms are signed in various places, on balance I think the salesperson did go through them with Mr B during the meeting.*

*The forms set out the total income and savings Mr B could expect in year 1 (£885.04); electricity savings over 30 years (£35,915.58); saving on export tariff over 30 years (£5,386.36); and battery storage saving over 30 years (£19,428.17). It also said the estimated profit from the scheme was around £47,000 with an estimated payback time of 12 years. But those figures were relevant if the system was bought for cash.*

*There is another section titled 'Your Agreement' with tables showing repayments (towards credit agreements) over different terms. The relevant loan term for Mr B is set out in the table for 180 payments of around £130 (which broadly matches the loan agreement). This table shows the accumulated savings year by year, the estimated monthly return and the average repayment difference. So this shows it wasn't until year 12 that the monthly benefits from the system would start to outweigh the monthly finance repayment cost.*

*There's another table titled 'What will you earn and save per year?':*

Panel degradation	Yr	Solar savings		Energy saving optional extras *		Total income savings	* Acc. grand total	Est. average monthly return	Ann. ROI
		Elec. savings	Export Tariff	Battery Storage					
100%	1	£417.04	£121.17	£346.83		£885.04	£885.04	£73.75	6.38%
99.48%	2	£444.08	£124.29	£361.97		£930.34	£1,815.39	£77.53	6.71%
98.96%	3	£472.87	£127.5	£377.77		£978.13	£2,793.52	£81.51	7.05%
98.44%	4	£503.53	£130.79	£394.25		£1,028.57	£3,822.09	£85.71	7.42%
97.92%	5	£536.18	£134.16	£411.46		£1,081.79	£4,903.88	£90.15	7.8%
97.4%	6	£570.94	£137.62	£429.41		£1,137.97	£6,041.84	£94.83	8.21%
96.88%	7	£607.95	£141.16	£448.15		£1,197.27	£7,239.11	£99.77	8.63%
96.36%	8	£647.37	£144.8	£467.71		£1,259.88	£8,498.99	£104.99	9.09%
95.84%	9	£689.34	£148.54	£488.12		£1,326	£9,824.99	£110.5	9.56%
95.32%	10	£734.03	£152.37	£509.42		£1,395.82	£11,220.81	£116.32	10.07%
94.8%	11	£781.62	£156.29	£531.65		£1,469.57	£12,690.38	£122.46	10.6%
94.28%	12	£832.3	£160.32	£554.85		£1,547.48	£14,237.85	£128.96	11.16%
93.76%	13	£886.26	£164.46	£579.07		£1,629.78	£15,867.64	£135.82	11.75%
93.24%	14	£943.72	£168.7	£604.34		£1,716.75	£17,584.39	£143.06	12.38%
92.72%	15	£1,004.91	£173.04	£630.71		£1,808.66	£19,393.05	£150.72	13.04%
92.2%	16	£1,070.06	£177.51	£658.24		£1,905.8	£21,298.85	£158.82	13.74%
91.68%	17	£1,139.43	£182.08	£686.96		£2,008.48	£23,307.33	£167.37	14.48%
91.16%	18	£1,213.31	£186.78	£716.94		£2,117.02	£25,424.35	£176.42	15.27%
90.64%	19	£1,291.97	£191.59	£748.23		£2,231.79	£27,656.14	£185.98	16.1%
90.12%	20	£1,375.74	£196.53	£780.88		£2,353.15	£30,009.29	£196.1	16.97%
89.6%	21	£1,464.93	£201.6	£814.96		£2,481.48	£32,490.77	£206.79	17.9%
89.08%	22	£1,559.91	£206.79	£850.52		£2,617.22	£35,107.99	£218.1	18.87%
88.56%	23	£1,661.04	£212.13	£887.64		£2,760.81	£37,868.8	£230.07	19.91%
88.04%	24	£1,768.73	£217.59	£926.37		£2,912.7	£40,781.5	£242.73	21.01%
87.52%	25	£1,883.41	£223.2	£966.8		£3,073.41	£43,854.92	£256.12	22.16%
87%	26	£2,005.52	£228.96	£1,008.99		£3,243.47	£47,098.38	£270.29	23.39%
86.48%	27	£2,135.54	£234.86	£1,053.03		£3,423.43	£50,521.81	£285.29	24.69%
85.96%	28	£2,274	£240.92	£1,098.98		£3,613.89	£54,135.7	£301.16	26.06%
85.44%	29	£2,421.43	£247.13	£1,146.94		£3,815.5	£57,951.2	£317.96	27.52%
84.92%	30	£2,578.42	£253.5	£1,196.99		£4,028.91	£61,980.11	£335.74	29.06%
Cost to replace product at end of warranty				£1,250					
Totals		£35,915.58	£5,386.36	£19,428.17		£60,730.11	£60,730.11	Ave. ROI:	14.6%

\* Earnings are made in form of credit paid against your bill

Given I've found the credit agreement was clear enough for Mr B to have seen how much was required to be paid, and over how long if the loan ran to term, I think he would have been able to see from the quote when the system would have produced enough benefit to have covered the cost of the system and the associated finance agreement. Mr B would have seen if the loan ran to term, he would have been required to pay around £23,000 and, by comparing to the table above, it wouldn't have been until around year 16 or 17 that the system would have likely produced enough benefit to have covered the cost of it.

However, Mr B has highlighted the figures S used to calculate the estimated benefits were drastically wrong. S based its savings figures on Mr B paying £100.56 for electricity per month and said his usage at that time was around 6,000kWh of electricity. But the bill it had for Mr B that is copied on to the quote shows Mr B used 780kWh for the year; his bills were around £20 per month, and he was expected to use the same for the next 12 months.

Mr B's annual bill for electricity was around £250. S estimated Mr B would save over £400 on electricity in year 1 and nearly £350 through having the battery storage. It estimated he'd use around 6,000kWh's of electricity. Based on what I've seen, I don't think the figures seem right, and it's had a significant impact on the estimated savings Mr B would make.

I appreciate Mr B signed the quote in several places. And arguably he ought to have noticed something was wrong. But given S was the professional, it should have seen that the figures didn't match the electricity bill Mr B provided. Moreover, during an aftersale call on 8 July 2021 Mr B indicated his monthly electricity bill was £60. While this wasn't right either, it also didn't match what S had recorded. So it's not clear why the apparent error wasn't picked up then either.

I've reviewed some of Mr B's electricity statements for the months after the system was installed. While I can see there were a couple of months of high usage around wintertime, more often than not his bills were around the £20 - £30 a month mark.

*S said Mr B would be estimated to benefit by nearly £900 in year one. When stripping out the export payment, S said Mr B would likely benefit by around £750 just through electricity bill and battery savings. Given his annual bill before having the panels installed was around £250 it seems as though the figures are completely wrong and unrealistic. If that's right, the impact on the figures in the table above are clearly significant and the actual savings Mr B would likely make from the system are nowhere near what S told him. If that's not right, or if I've misunderstood, Allium can let me know in response to this provisional decision.*

*Mr B highlighted S overestimated his electricity bills by five times and his usage by seven times. Had the correct figures been input I can't see he would have proceeded to enter into a 15-year credit agreement with a monthly payment required of around £130 because the estimated savings wouldn't have been anywhere near what was set out. That's a huge commitment to make, and Mr B's testimony that the expected financial benefits were the reason he bought the system seem plausible and convincing.*

*I consider S's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr B 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 benefit Mr B by a certain amount. But, even if they did not have that effect, they nonetheless represented the basis upon which Mr B went into the transaction. Either way, I think S's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr B's point of view.*

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

*Where Allium is to be treated as responsible for S's negotiations with Mr B in respect of its misleading and false assurances as to the estimated benefits of the solar panel system, I'm persuaded a court would likely conclude that because of this the relationship between Mr B and Allium 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 Allium 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 B and Allium's relationship arising out of S's misleading and false assurances as to the expected benefits of the system.*

*I think there's two viable ways to resolve the issue. Allium could rework the loan so that Mr B is effectively compensated for the sum he's lost out. This would involve refunding Mr B the difference in the benefits for the period so far and recalculating the loan payments for the remainder of the term. But I'm conscious that, in the grand scheme of things, Mr B hasn't had the system for that long and there's still well over 10 years left on the finance agreement. In the very particular circumstances of this complaint, I think it might be more straight-forward for Allium to arrange to have the system removed; Mr B's property made good; and for Allium to refund Mr B his loan payments less any benefit he's received through electricity savings and export. This will put Mr B in the situation he would have been in had S not misled him. I'm going to propose this is what happens, but if Allium wants to put forward an alternative it can let me know in response to this provisional decision.*

*Allium 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.

*Finally, I consider that Allium's failure to fully deal with Mr B's s.140A claim or complaint caused Mr B some degree of trouble and upset. In recognition of this, and in addition to what I have already set out above, Allium should also pay Mr B £100.*

Mr B accepted the provisional decision. Allium spoke to S, and it responded to say, in summary:

- The documents provided from August 2020 were only predictions of energy use. It said Mr B only purchased the property in 2020 so he didn't have records of energy consumption.
- The estimated usage of 750kWh wasn't possible.
- For 2024 energy, Mr B was shown to have self-consumed 2,500kWh with a grid purchase of 1,100kWh showing the actual usage was 3,600kWh.
- Mr B signed to confirm his energy spending.

We wrote back to the parties about the responses. Mr B said, in summary:

- He moved from a 3-bedroom property into this significantly smaller property. He said the bills and usage were correct to the best of his knowledge.
- While his electricity use may have increased over time due to him buying large appliances and spending more time at home, he only used limited electricity at the point of sale of the system.
- Even if the estimate was wrong, S should have highlighted it.
- The system is generating under 85% of the estimate indicating there's a problem.

We wrote to Allium to say, in summary:

- Mr B was predicted to use 6,000kWh. We questioned why there such a large discrepancy given Allium said the consumption was 3,300kWh on the monitoring figures (albeit from 2024 when Mr B said it had gone up).
- The system seemed to be underperforming quite significantly compared to the estimate, indicating a problem.
- The quote was signed in 2021 so we asked why S didn't obtain more accurate bills.
- Prior to the installation, Mr B let S know his electricity bill was £60 per month – significantly less than S thought he spent (£100). I wanted to know why this discrepancy wasn't picked up.

I can't see we received a response from Allium to the further questions, despite extending the deadline for 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.

Given I still think there are some large unexplained discrepancies with regards to the energy usage, I remain of the view they have had a significant impact on the estimated savings S told Mr B he would make. For the reasons given in my provisional decision, I'm not persuaded Mr B would have entered into the agreement if the financial benefits were calculated more accurately – specifically in relation to how much electricity Mr B would use. Had more accurate figures been used, I think it would have taken far longer for the system to have paid for itself, which I can't see how it would have been appealing for Mr B. I think S

missed opportunities to re-evaluate the figures before the installation. And I think the apparent underperformance has only compounded the issue. I still think my original outcome is the fairest way to put things right, for much the same reasons.

### **My final decision**

My final decision is that I uphold this complaint and direct Allium Money Limited to:

- End the agreement and refund Mr B everything paid towards it. Allium can deduct any known or assumed benefits Mr B has received from the system\*.
- Interest\*\* should be added to the refund at a rate of 8% a year simple, from the date each payment was made to the date of settlement.
- Arrange for the removal of the system from Mr B's property and make sure the property is made good and any repairs required are carried out to a proper standard, at no cost to Mr B.
- Pay Mr B £100 compensation.

\*Mr B will need to supply Allium evidence of his electricity bills and benefits he's received from the system.

\*\*If Allium considers it is required to deduct tax from my interest award it should provide Mr B a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 March 2025.

Simon Wingfield  
**Ombudsman**