DRN-5492321

The complaint

Ms J has complained about the way Creation Consumer Finance Ltd ("Creation") responded to claims she'd made under section 75 ("s.75") of the Consumer Credit Act 1974 ("the CCA"), and Ms J has complained about alleged irresponsible lending.

Ms J has been represented in this case. For simplicity, I will refer to Ms J throughout this decision.

What happened

On 16 May 2022, Ms 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 "P". The loan was for £9,896.21, the loan was arranged with zero per cent interest and the total amount payable under the agreement was £9,896.04. Ms J was due to pay back the agreement with 36 monthly repayments of £274.89.

After bringing a complaint to Creation, Ms J referred her complaint to this service. Ms J said she had put in a claim with Creation explaining she thought the system was mis-sold. In summary, she said that P told her that the system would be self-funding and misled her at the point of sale as the system has not been self-funding. Ms J said that Creation was responsible for the misleading statements made by P. Ms J says that her statements show an insufficient amount of energy has been produced and so the installation must have been done without sufficient case and skill. Ms J said that Creation failed to lend responsibly in providing the loan.

Ms J's complaint was considered by an Investigator who thought that the complaint should be upheld. I disagreed in a provisional decision some months ago. Ms J disagreed and told me that some parts of her complaint hadn't been considered. This led to some further investigation. I issued my second provisional decision on 2 April 2025. I issued my findings on this case in full in that decision, a section of which is included below, and forms part of, this decision.

In my provisional decision of 2 April 2025, I set out the reasons why it was my intention not to uphold Ms J's complaint. I set out an extract below:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've read and considered the whole file, but I'll confine my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

Ms J has raised three main heads of complaint. She says that the lending was irresponsible, she was misled about the potential benefits of the solar panels and that the work was not undertaken with sufficient care and skill. As mentioned above, the last two

aspects are considered in respect of how Creation considered the s.75 claim that Ms J made. I will start by considering the claim of irresponsible lending.

Irresponsible lending

Creation will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

I have noted that Ms J was retired at the time of the lending and that her income was partly made up of benefits. And I have listened to all the calls submitted between Ms J and her energy provider. And Ms J explained to her energy provider that she was concerned about her ability to meet her rising energy costs.

But in reaching my decision on this subject, I must have regard for the fact that Creation was not that energy provider, and I must consider the information that Creation had, or ought reasonably to have had, when it made the lending decision. I have had no telephone calls to listen to between Creation and Ms J.

Ms J's complaint is that Creation made credit available that was unaffordable. Creation has explained that it relied in part on information that Ms J provided at the time of application to assess affordability.

It is possible that Creation could have made more searching enquiries into Ms J's finances before agreeing the loan. But had it done so, I'm not sure that what they might have seen would have made their lending decision unreasonable. I say that because I have considered the credit file and bank statements that Ms J has provided us. Having consider all the submissions made I do not think that a more thorough check into Ms J's finances would have put Creation off from providing the lending Ms J asked for. I'll explain why I say that.

Creation said the application data was a starting point for its decision making. Creation said they carried out credit searches in Ms J's name to assess Ms J's level of debt at the time of the lending decision and to understand how she had been managing that debt. With that information and using their own scoring metric, Creation decided to agree to the loan in 2022.

I've noted that the results of the credit check Creation performed at the time. It showed that Ms J had existing credit of a modest nature and that Ms J had a good track record in managing those accounts. In saying that, I have noted that the check Creation performed showed no instances of any adverse credit history. So, I don't think Creation were wrong to form the impression that Ms J was managing her existing credit. And the credit report that Ms J submitted to us during this complaint seems to confirm the evidence that Creation found in 2022. The credit file that Ms J provided us also showed no evidence of Ms J relying on any short-term lending.

So, in my opinion, the information about Ms J's existing credit would have suggested that, at that time, Ms J was managing her existing credit. And the existing credit was not so large that Creation should have avoided providing Ms J with any further credit.

In saying that, I have noted that the loan amount was relatively modest and the monthly payments for the loan were not unreasonable in relation to the declared income. And I don't think the new credit when added to the existing borrowing made this credit

unreasonable. So, the lending looked to be affordable and reasonable at the time and Creation had little reason to make more searching enquiries than it had.

I mention in passing that even had I reached a different finding on this matter, it is unlikely that any redress would have been payable. In irresponsible lending cases we often take the view that the consumer has had use of the goods that were purchased funded by the borrowing in question. In such cases it is not often fair to refund the borrowing in full or the consumer would have a double benefit, the goods and the return of the money used to buy them. Rather, we often suggest the business refund any interest or charges that have been incurred by the consumer in managing the borrowing. In this case the loan was set up on a zero per cent interest basis. So, had I reached a different finding on whether the lending was responsible, there would have been, most likely, no redress payable to Ms J for it.

In any event, I have seen insufficient evidence to find that the lending was unreasonable based on the evidence Creation acquired, or the information they could have acquired at the time.

Was Creation's handling of the s.75 claim reasonable?

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

In this case the relevant law includes section 56 and section 75 of the CCA ("s.56" and "s.75"). S.75 provides protection for consumers for goods or services bought using credit. As Ms J paid for the system with a fixed sum loan agreement, s.75 applies to this transaction. This means that Ms J could claim against Creation, the creditor, for any misrepresentation or breach of contract by P, the supplier, in the same way she could have claimed against the supplier. So, I've taken s.75 into account when deciding what is fair in the circumstances of this case.

S.56 is also relevant. This sets out that any negotiations between Ms J and P, the supplier, are deemed to have been conducted by P as an agent of Creation. For the purpose of this decision, I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

What happened?

Ms J's claim is that she should be paid redress under s.75 for two reasons:

- *A Ms J says she was verbally misled the system would effectively pay for itself. And*
- *B Ms J says the solar panels were not fitted with due care and skill.*

A. Was Ms J verbally misled the system would effectively pay for itself?

I've taken account of what Ms J says she was told. I've also reviewed the documentation that I've been supplied.

The fixed sum loan agreement signed by Ms J and dated 16 May 2022 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 Ms J to be able to understand what was required to be repaid towards the agreement.

I have also noted the document called 'Your personal solar quote' dated 5 April 2022. This contained a section which described the estimated annual output and likely benefits. This suggested the estimated benefits included an amount for the possible reduction in Ms J's spending on energy ('Electricity savings') and an estimated payment for possible energy generated by the solar panels and exported to the grid ('Export income'). The estimation of possible year one benefits for electricity savings was £394.57 and the possible export income was £93.66. Both figures are captured in bold font and are prominently displayed early in the document. That same page shows the total estimated benefit in year one of the solar panels is £488.24. That figure is in bold and is prominently displayed. And that document was one that Ms J sent us.

I think the above mentioned information ought to have shown Ms J the savings wouldn't have covered the annual loan repayments cost which would be around £3,300 when they became due to be paid. I would have expected Ms J to have queried the shortfall if she'd been told the system would be self-funding from the very beginning.

I have listened to all the telephone calls that Ms J has provided. These are all between Ms J and her energy supplier. At no time in the five and half hours of calls do representatives of the energy supplier introduce the subject of solar panels as an answer to reducing future energy bills. And when Ms J raises the subject, the energy supplier representatives refer Ms J to the separate business that might be able to answer Ms J's enquiries about them.

I note that Creation reached out to P for details of what was discussed with Ms J and we have asked Ms J to provide any evidence she has about those interactions. At the time of writing neither party has been able to provide much evidence of the interaction between P and Ms J apart from the solar quote. So, I can't know what P had to say about the solar panels and their likely performance. But I must reach a decision on each case. And I do so on the evidence that has been provided in this case.

Based on the submissions that have been made, I find there is insufficient reason to think that Creation were unfair to Ms J in declining her claim under s75 that she had been misled by P in this case.

B Were the solar panels fitted with due care and skill?

Ms J has also complained that the solar panels were not fitted with due care and skill. Ms J told us that no electricity generated by the solar panels is available for her use.

Creation said that the installation was performed with due care and skill. But they also said they had contacted P who told them that on 3 November 2022, P did a calibration of the battery as it was losing 10 - 20% capacity due to shipping and storage. That appeared to have resolved the capacity issue and the system appeared to be operating at peak thereafter. And Creation told us they had paid a goodwill gesture of £194 to cover the costs incurred by Ms J when she had to purchase mains electricity from the National Grid.

In cases such as this, it is often complex to assess the quality of the goods or the quality of the installation that Ms J paid for. And the documentation from P is limited as they did not respond to Creation's request for information. So, I'm not able to discern why so much energy was returned to the grid from the evidence that has been provided. And I have no documentary evidence such as emails, telephone calls, or letters between Ms J and P in which these issues were discussed or complained about.

But I have read the statements that Ms J has provided. These show that Ms J's energy consumption went down after the installation and Ms J has exported energy to the grid and been paid for it. These are the two things that were estimated benefits of the system in the solar quote. And they appear to have been provided by the installation. The amount of it may not have been to Ms J's entire satisfaction but it must be remembered that the solar quote clearly provided only an estimated benefit the panels might provide. That does not diminish the fact there have been financial benefits from it. And that these are identifiable from Ms J's statements.

And if Ms J thinks her system is at fault in some way because of the way that the energy is being directed. I have no other evidence to look at such as, for example, an independent, expert opinion that sets out that P failed to complete the installation with due diligence, and which might then act as evidence to support Ms J's assertions. Without sufficient supporting evidence, I don't think Creation was unfair to not uphold the s.75 claim on the basis of a breach of contract because I've not seen enough to determine the service P offered wasn't carried out with reasonable skill and care.

Overall, I have seen insufficient evidence to find that the lending was done in an irresponsible manner, or that P misled Ms J as to the potential financial benefits of fitting solar panels, or that the installation of the solar panels was done in a way that lacked due care and skill. Consequently, I do not think there has been a breach of contract. So, I don't think that Creation acted unfairly when it rejected Ms J's claim and complaint."

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 16 April 2025. Neither party has accepted the provisional decision, acknowledged receiving the provisional decision, made any further submissions in the case or asked for an extension to do so. I consider that both parties have had sufficient time to make a further submission had they wished to do so. So, I'm proceeding to my 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.

Given that there's no new information for me to consider following my provisional decision, I have no reason to depart from those findings. And as I've already set out my full reasons for not upholding Ms J's complaint, I have nothing further to add.

My final decision

For the reasons set out, I'm not upholding Ms J's complaint about Creation Consumer Finance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 15 May 2025.

Douglas Sayers
Ombudsman