

The complaint

Ms M has complained that Creation Consumer Finance Ltd Creation declined her claim against it under Section 140 of the Consumer Credit Act 1974.

What happened

Ms M bought a solar panel system (the system) for her home in 2013. The total price of the system was £10,999. After a deposit of £1,000 and a contribution from the installer (who I'll refer to as A) of £1,000, Ms M used a loan agreement from Creation to pay the remaining amount. Including finance and charges, the total amount repayable under the loan was just over £14,000, over a term of 10 years. The monthly payments were just over £118. My understanding is that the loan was repaid in 2023.

Ms M alleges that A misled Ms M into believing that the panels would be self-funding. Ms M says that Mr M was mainly involved in the sales pitch, but she feels that he was at the early stages of suffering from a medical condition. So, concerns over his cognitive ability and capacity ought to have been apparent to A.

In March 2021, Ms M initially raised a complaint under section 75 of the Consumer Credit Act 1974 which was dealt with separately – so I will not refer to this complaint again.

In 2023, Ms M complained to Creation that she felt the system had been misrepresented to her, and this made her relationship with Creation unfair. She wanted her claim to be considered under section 140 of the Consumer Credit Act 1974 (section 140).

Creation said Ms M had raised her claim too late and therefore it would not consider her claim any further. It issued a final response on this basis. So, Ms M's complaint was referred to this service.

Ms M's complaint was considered by one of our investigators. Our investigator didn't feel the claim had been raised too late and neither party has since disputed this. However, our investigator also said that while they accepted that A appears to have contacted Ms M (and Mr M), to sell the panels and they did not seek this out, so financial benefits/cost may have been of importance, Ms M hadn't been able to provide any evidence that A had made the misrepresentations she was now claiming. So, they didn't think there was sufficient evidence that the system was sold to her on the basis that it was self-funding. They added that only a medical professional could decide whether Mr M had capacity, and in any event, it didn't look like A had been informed of his circumstances at the time.

Ms M disagreed. She said (through her representatives) that:

- Given Mr M's inability to remember when the house was originally purchased and that he was prone to repetition, it should have been apparent that he might have been cognitively impaired.
- Ms M said her own testimony as to why the system had been purchased was clear and she reiterated that she wouldn't have bought it if she'd known the system wouldn't be self-funding.

- Ms M could not locate the sales documentation or the MCS certificate and couldn't get a replacement MCS certificate as the Feed in Tariff (FIT) payments and FIT statements were in Mr M's name. A had also ceased trading so she was unable to ask them for any documents.
- Ms M had found it difficult to gather evidence to corroborate her claims, but she felt bearing in mind it was accepted that A had actively contacted her to sell her the system, and costs would have been important to her, it's more likely than not that the system was mis-sold on the basis that it was self-funding.

As the complaint couldn't be resolved by our investigator, I've been asked to make a 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.

Ms M says that the system was misrepresented to her and sold to her on the basis that it would be self-funding. That A told her the payments received from the FIT scheme and savings on utility bills would cover the cost of the loan as well as leaving them with a surplus. She says she was mis-led about the system, so this makes her relationship with Creation unfair. The system was sold in 2013.

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.

Having carefully considered everything provided, for much the same reasons as those explained by the investigator, I do not uphold this complaint, and I'll explain why.

My concerns with Ms M's case is that as she's making the claim so long after the sale, I don't think it's unreasonable for Creation to require some evidence to support the allegation that A misrepresented the system to her. She accepts that it was Mr M that was mainly involved in the sales pitch – but also wants Creation to uphold the claim based solely on her testimony alone. No documents are available to corroborate her claims and while I sympathise with the difficulties Ms M has faced in collecting evidence to support her claim, I don't think this means she doesn't need to evidence her claim.

I have also thought about the wider circumstances of the case. I have to bear in mind that the system was sold in 2013, and Ms M says it was sold on the basis that the loan payments would be covered by FIT payments and savings on bills. So, if this was one of the main reasons why the system was purchased, and it was untrue, I think it would have been apparent shortly after the system was installed. If Ms M's loan payments weren't being covered by the benefits, I would have expected her to raise this soon after the system had been installed and she started receiving the benefits associated with the system. But Ms M didn't raise any concerns until 2021.

I understand Ms M says it was Mr M that was mainly involved in the sales meeting and decided to proceed with the sale. But she feels he was suffering from the early stages of a medical condition that might have affected his cognitive abilities and capacity. But as explained by our investigator, only a medical professional can decide whether an individual has capacity or if they were cognitively impaired, and that sort of evidence hasn't been provided here. Additionally, I haven't seen anything that suggests A was informed of his difficulties at the time. Without any medical evidence, I couldn't safely conclude that it ought to have been obvious to A that Mr M was unable to comprehend what was being discussed

and unable to agree to the sale. I note the loan agreement was, in any event, in Ms M's name, and she agreed to the sale.

In this case, other than Ms M's testimony that the system was misrepresented to her, alongside her acceptance that it was Mr M that was mainly involved in the sales pitch, there isn't any other corroborative evidence and no documentary evidence to support that claim. So, I don't think based on the available evidence, it would be fair for me to direct Creation to offer a remedy in this case.

While I've considered carefully Ms M's testimony, I don't think there's sufficient evidence here that the system was misrepresented to Ms M in the way she now alleges. So, I don't think I could safely conclude that the relationship with Creation was unfair. Overall, I find no grounds to uphold this complaint.

I should, however, point out that Ms M doesn't have to accept this decision. She can pursue the matter by more formal means such as through the courts and ultimately, it would be for the court to determine, whether her relationship with creation was unfair.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 7 January 2026.

Asma Begum
Ombudsman