

## **complaint**

Mr L complains that Creation Consumer Finance Limited, trading as Creation, will not cancel his loan agreement and remove the solar panel system which he believes was mis-sold to him. The complaint is brought on his behalf by his wife. But for ease, I shall refer below to all actions being taken by Mr L.

## **background**

I issued a provisional decision on this complaint on 29 September 2015. A copy of that decision is annexed to this final decision and forms part of it. I invited the parties to submit any further representations they wished to make before I finalised my views.

Creation Consumer Finance Limited ("Creation") disagrees with my provisional decision.

## **my findings**

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

I have read the additional information Creation has provided. In particular, I have now seen statements from M's sales adviser and his manager along with some additional supporting documents. I've also listened to a call between Mrs L and our adjudicator.

The statements deal with a meeting that took place *after* the sale of the solar panel system and after Mr L had raised a complaint. It's clear that the parties continued to disagree about what was said during the original sales meeting. And I can see that things became quite heated. So this doesn't really help me decide what Mr L was told at the time the solar panel system was sold. It does show that Mr L continued to say he'd been told the system was free and he's said this consistently.

The sales adviser doesn't set out what he told Mr L at the time. He suggests Mr L understood that he was taking out a loan because of all the documents he signed. But in his statement the adviser says finance was "an option". The adviser also relies upon an email. I've looked at all of this. I've dealt with the forms in my provisional decision. So I've gone onto look at the email, which was sent after the sales meeting. I don't think that email alone shows Mr L had agreed to take the loan agreement.

The email has been provided in isolation without the email chain around it. It says finance "may be used". So despite forms having been completed during the meeting, this suggests Mr L hadn't actually agreed to take a loan at that point. In my view that supports Mr L's recollection that he signed the forms during the meeting as a back-up. That also fits with the adviser describing finance as "an option". I think that's consistent with what Mr L has told us.

I've also listened to the call between our adjudicator and Mrs L. Mrs L is adamant that she and Mr L were told the system wouldn't cost them anything. They thought they'd chosen to take the Government grant.

I have looked again at my provisional decision. For the reasons I gave in that decision, I remain satisfied of the findings and conclusions that I reached. So taking that into account and the points set out above, I still think this complaint should be upheld.

**my final decision**

For the reasons given above and within my provisional decision, I am upholding this complaint.

I direct Creation Consumer Finance Limited to put things right as set out in the attached provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 January 2016.

Sarah Tozzi  
**ombudsman**

## **PROVISIONAL DECISION**

### **complaint**

Mr L complains that Creation Consumer Finance Limited, trading as Creation, will not cancel his loan agreement and remove the solar panel system which he believes was mis-sold to him. The complaint is brought on his behalf by his wife. But for ease, I shall refer below to all actions being taken by Mr L.

### **background**

Mr L says M, a solar panel company, offered him "fully funded" solar panels, Mr L believed that the panels were free as they had Government backing, Mr L paid for the solar panels, an IBoost system, nest heating system, a high power inverter, radiator reflectors and a Geo reader with credit provided by a fixed sum loan agreement with Creation, The loan was for £11, 699 repayable over 10 years. So, with interest, Mr L would repay nearly £19,000, The panels were installed in mid-September,

Mr L says he wouldn't have gone ahead if he'd been told he was taking out a loan,

Mr L says that the panels and the IBoost don't work. He also thinks the figures suggested by M were exaggerated.

Mr L has refused to have all the equipment installed, in particular the feed in tariff (FIT), nest and reflectors and hasn't made any loan repayments, M has offered to come and install these remaining products and to inspect them, M has also suggested that Mr L operates the full system for 1 year and that if there is any shortfall, it will make up the difference and then look to restructure the figures.

Mr L has rejected all these options. He asks for the panels to be removed and the loan to be cancelled.

Section 75 of the Consumer Credit Act 1974 says that Creation can be held jointly liable if it can be shown that there has been a breach of contract or misrepresentation on behalf of the supplier.

Creation doesn't accept that Mr L was misled. It says he was told that the tariff generated from the panels could be used to pay off the loan. Creation also noted that Mr L refused to co-operate with M, so it asked Mr L and M to try and reach agreement. They haven't done so.

Our adjudicator considered the complaint but decided not to uphold it, Mr L is unhappy with that view so the matter has come to me for a final decision,

### **my provisional findings**

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

I've looked at two main aspects of this complaint. What Mr L was told when he took out the agreement and signed the contract as well as the performance of the solar panels and iBoost system.

#### *misrepresentation that the panels and system were "fully funded"*

I don't know what was said during the sales meeting, so I will decide what I think is more likely to have happened by considering the documents from the time and the parties'

recollections of events.

I've listened to a call recording, which took place before the sales meeting. In that call Mrs L was told that M offered self-funded packages. The adviser talks about a Government backed scheme for solar energy and explains that the income from the electricity would pay off the cost of the panels over 20 years. The adviser also says, "you don't use your money , , , Creation supplies the upfront costs,"

Mr L says a representative from M discussed 2 payment options, fully funded or the pay upfront, Mr L believed fully funded meant the Government paid for the panels so he chose it, Mr L didn't understand he was taking out a loan and thought he was completing the forms in case he changed his mind and wanted to pay for the panels upfront. Mr L and his wife are adamant that they were told the panels were "fully funded" and the system would "pay for itself. And I've seen a copy of M's website that says "fully funded" options were available. So I think it's likely this is what Mr L was told.

I've looked carefully at the documents here, which Creation relies on. There are 4 key documents; the contract, the estimate, the fixed sum loan agreement and a satisfaction note, Mr L has signed each of these documents so I'm satisfied that he has seen them before. The contract sets out the products being bought, the price of £11, 699 and finance is ticked as the payment option. And having looked at the bold title and layout of fixed sum loan agreement, I'm persuaded that Mr L would've known he was signing a loan agreement. But the point here is that Mr L didn't think that agreement was going to be executed; it was a back-up.

The estimate sets out the expected amount of energy the solar panel, IBoost, heat reflectors and nest heating system would have generated and this has been converted into a tariff (i.e. the income and savings from the panels and products). But there's no mention of the loan payments that would have to be repaid.

The next document is a satisfaction note. The document also sets out the estimated tariffs, I think the reference to annual savings on the form is misleading without also mentioning the loan repayment figures, I accept Mr L's testimony that he was told to sign the form when he was in the doorway just to confirm the quality of the panel installation. He didn't realise it was to activate a loan.

Mr L spoke to the adviser in his home and was asked to sign several documents, I think he'd have placed more weight on what he was told and I accept that he was repeatedly told the system was fully funded. Crucially M had said before the meeting that Mr L wouldn't have to use his own money.

On balance, after careful consideration, I think Mr L only entered into the contract because he was led to believe he wouldn't have to pay anything, I don't think he'd have bought the system if he'd known loan repayments were due regardless of the amount of profit (if any) made from the panels. On the basis of M's projections, it'll take around 15 years to earn the amount he's borrowed. If this had been explained to Mr L at the point of sale, I don't think he'd have gone ahead.

Once Mr L realised loan repayments were due, he refused to pay them and complained to M and then Creation, saying that he thought the panels were free and he didn't have to pay, I think that supports my view that he wouldn't have entered the contract if he had known he'd have to pay.

*breach of contract - defective panels and defective IBoost*

Mr L says the solar panels are defective and do not work. Our adjudicator encouraged Mr L to get some expert advice about this, but he hasn't done so, Mr L also chose not to have the FIT installed, so he's got no record of the tariff, I can't fairly decide whether there's a defect with the system or a low output due to the time of year.

The same reasoning applies to the IBoost, Mr L says he's not received any benefit from it, but M said it needed to be set up with the heat reflectors and the nest heating system combined. That hasn't been done as the nest system and heat reflectors haven't been fitted. So I'm not in a position to make a fair decision about the likely output, M offered to install these parts for Mr L and to test the system.

On balance, there's not enough evidence for me to find there was a breach of contract here. Even if there was a defect, I think M has offered to put matters right by inspecting and repairing if necessary.

*putting things right*

Mr L needs to be put in the position as if the misrepresentation hadn't been made. So Creation should arrange for the removal of the solar panel system at no cost to Mr L, and to restore Mr L's property to its original state. It should also put Mr L back into the position he would've been in by cancelling the loan. I can't see that any repayments have been made on the loan, but if any repayments have been made they'll need to be refunded and Creation should pay Mr L interest on his repayments at 8% simple per annum from the date of each payment to the date of settlement. It should also remove any information about the agreement from Mr L's credit file.

**my provisional decision**

Subject to any further evidence or representations received from Mr L or Creation Consumer Finance Ltd, I propose to uphold Mr L's complaint, I am minded to direct Creation Consumer Finance Ltd to:

1. Arrange at its cost for the removal of the solar panel system and the return of Mr L's property to the state it was in before the system was installed. This means, for example, replacing any roof tiles rather than just repairing them;
2. Cancel Mr L's loan agreement and write off anything that is due under the agreement;
3. Refund to Mr L any repayments he has made (if any), after deducting the amounts he has received as income;
4. Interest should be calculated and paid to Mr L on the payments refunded (if any) at 8% simple per annum from the date of each payment to the date of settlement; and
5. Remove any information about the agreement from Mr L's credit file,
6. If Creation considers it has to deduct tax from the interest element of my award, it should send Mr L a tax deduction certificate when it pays him. He can use that certificate to try to reclaim the tax, if he is entitled to do so.

I now invite the parties to provide any further submissions by 29 October 2015, after which time I will reconsider this complaint.

**Sarah Tozzi**

**ombudsman**