

## The complaint

Mr S has complained about Creation Consumer Finance Ltd trading as Creation.Co.Uk ('Creation') in relation to a solar panel system he purchased using a fixed-sum loan from Creation.

## What happened

In March 2015, Mr S bought a solar panel system ('the system'), from a company I'll call "M", using a 10-year fixed sum loan from Creation.

Mr S contacted the Financial Ombudsman Service because he was unhappy about his purchase of the system and didn't know what to do about it. He said that he was interested in reducing his outgoings prior to retirement and was told by M, which cold-called looking to sell solar panels, that the system would pay for itself – in effect the system would be free because the financial benefits of the system would cover the loan repayments making it self-funding. However, this hadn't happened and he's actually worse off since the financial benefits have not covered the loan repayments.

We asked Creation to look into this matter. Creation dismissed Mr S's concerns since it said under the Financial Conduct Authority's Dispute Resolution (DISP) Rules Mr S's complaint was time-barred. Creation said the system was sold to him more than six years before he raised the issue, and more than three years after he ought to have realised there was a problem.

Unhappy with Creation's response, Mr S asked us to look into what had happened.

Our Investigator considered Mr S's complaint, they said that:

- Mr S could make a claim under Section 140A of the CCA (s.140A) because the complaint related to his relationship with Creation which was still ongoing, and he'd have six years after the end of the relationship (when the loan agreement ends) to make such a claim alleging the relationship was unfair on him – so the complaint was not time-barred under the DISP Rules.
- Misrepresentations could be considered under s.140A.
- A court would likely find an unfair relationship had been created between Mr S and Creation due to what M told Mr S about the system.

Our Investigator recommended that Mr S keep the system and Creation adjust the loan to make sure the system was effectively self-funding – that he'd pay no more than the benefit he is likely to receive over the term of the loan.

Creation did not respond to our Investigator within a reasonable time. Creation had some concerns about our approach to this type of complaint, which it has discussed with the Financial Ombudsman Service more generally. But Creation is aware of our approach and

our reasons for this and has received final decisions on similar complaints which explain our approach in detail. So, I've been asked to make a decision on this complaint.

### **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.

#### My findings on jurisdiction

I'm satisfied I have jurisdiction to consider Mr S's complaint. The event complained of is Creation's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mr S. Here the relationship was ongoing at the time the complaint was referred to the Financial Ombudsman Service, so the complaint has been brought in time for the purposes of our jurisdiction.

#### My findings on the merits of the complaint

When considering whether representations and contractual promises by M 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 M to be the agent of Creation 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 M – for which Creation were responsible under s.56 – when considering whether it is likely Creation acted fairly and reasonably towards Mr S.

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

#### What happened?

Mr S has said that he was interested in reducing his outgoings prior to retirement and M told him that the system would achieve that goal – in effect the system would be free because the financial benefits would cover the loan repayments. However, this hasn't happened, and Mr S's outgoings have increased due to the financial benefits of the system being less than the monthly loan repayments.

I've looked at the documents provided by Mr S to see if there was anything contained within them that made it clear that the solar panel system would not be self-funding, since this could be important when thinking about how plausible and persuasive Mr S's recollection is.

The loan agreement sets out what Mr S agreed to pay for the system:

- Purchase price           £9,095.00
- Deposit                     £0.00

- Interest charge £5,087.20
- Arrangement fee £135.00
- 120 repayments of £119.31 per month
- Total amount payable £14,317.20

So, the loan agreement made clear what Mr S had to pay for the system.

The contract and other sales documents given to Mr S set out the following information about the system (along with some technical and contractual information which is not relevant to this decision):

- Purchase price £9,095.00
- Expected generation 2,617 kWh per year

The sales documents do not provide any description or explanation of the financial benefits of the system. So, it appears that Mr S would've had to rely entirely upon what the M's sales representative told him.

I've looked at a copy of M's website from July 2013 to see if it can shed any light on how M sold solar panels around that time. It does not provide any information about Photo-Voltaic Solar Panel installations or their benefits. So, there is nothing there to make me question what Mr S has said.

Ultimately, there is no compelling evidence to suggest that M would not have promoted the system as self-funding. Creation hasn't provided evidence to dispute what Mr S has said. Yet, with no prior interest, Mr S agreed to purchase the system using an interest-bearing loan, with a monthly repayment of around £119, payable for 10 years. Given his lack of prior interest and the financial burden he took on, and the lack of other evidence to call into question what he recalls, I find Mr S's account of what M told him to be plausible and persuasive. The loan is a costly long-term commitment, and I can't see why he would have seen this purchase appealing had M not assured him that the system would be self-funding and would reduce his outgoings.

For the solar panels to pay for themselves, they would need to produce combined savings and FIT income of around £1,352 per year. Given the reasonable assumptions that might have been used around the time of sale (for FIT rates, electricity unit rates and inflation), I do not think that M could reasonably have believed that purchasing the system using the loan would reduce Mr S's outgoings in the short or medium term.

By my calculations, using reasonable assumptions at the time of sale it would have been reasonable to say the financial benefits of the system would exceed the total payable under the loan agreement after around 17 years, but that for the duration of the loan Mrs S's outgoings would increase due to the loan repayments exceeding the financial benefits the system could provide. Had Mr S been told that, I do not think he would've agreed to the purchase. Mr S's system has been performing better than expected in terms of electricity generated, but despite this it still does not appear that the system will pay for itself within the loan term.

So, I have concluded that M's statements about the system's financial benefits reducing Mr S's outgoings were not true. M's representative ought reasonably to have been aware that Mr S's system would not have produced benefits at the level required to achieve a reduction in Mr S's outgoings during the term of the loan.

Considering Mr S's account about what he was told, the documentation he was shown at the time of the sale, and the lack of evidence to contradict what he has said, I think it likely M gave Mr S a false and misleading impression of the self-funding nature of the solar panel system.

I consider M's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr S was expected to receive by agreeing to the installation of the system. I consider that M's assurances in this regard likely amounted to a contractual promise that the solar panel system would have the capacity to meet or exceed the loan repayments during the term of the loan. But, even if they did not have that effect, they nonetheless represented the basis upon which Mr S went into the transaction. Either way, M's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr S's point of view.

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

Where Creation is to be treated as responsible for M's negotiations with Mr S in respect of its misleading and false assurances as to the self-funding nature of the solar panel system, I'm persuaded a court would likely conclude that, because of this, the relationship between Mr S and Creation 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 Creation has benefitted from the interest paid on a loan that Mr S 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 S and Creation's relationship arising out of M's misleading and false assurances as to the self-funding nature of the solar panel system. Creation should repay Mr S a sum that corresponds to the outcome he could reasonably have expected as a result of M's assurances. That is, that Mr S's loan repayments should amount to no more than the financial benefits he received for the duration of the loan agreement.

Therefore, to resolve the complaint, Creation should recalculate the agreement based on the known and assumed savings and income Mr S received (or will receive) from the system over the 10-year term of the loan, so Mr S pays no more than that.

To do that, I think it's important to consider the benefit Mr S received by way of FIT payments as well as through energy savings. Mr S will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to Creation. For periods where Mr S cannot provide this information, Creation can make reasonable assumptions – Creation is aware of our expectations in this regard.

Creation 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 Creation's unreasonable dismissal of Mr S's complaint caused Mr S some degree of trouble and upset. In recognition of this, and in addition to what I have already set out above, Creation should also pay Mr S £100 compensation.

## **My final decision**

For the reasons I have explained I uphold Mr S's complaint.

To put things right Creation Consumer Finance Ltd trading as Creation.Co.Uk should:

- Calculate the total payments Mr S has made towards the solar panel system up until the date of settlement – A
- Use Mr S's bills and Fit statements, to work out the benefits he received up until the date of settlement\* – B
- Use B to recalculate what Mr S should have paid each month towards the loan over that period and calculate the difference, between what he actually paid (A), and what he should have paid, applying 8% simple interest to any overpayment from the date of payment until the date of settlement\*\* – C
- Reimburse C to Mr S
- Use Mr S's bills and FIT statements, to work out the benefits he will receive for the period between the settlement of her complaint and the end of the original loan term\* – D
- Rework the loan so that the remaining balance is D and recalculate the remaining monthly payments equally over the remaining term of the loan.
- Pay Mr S an additional £100 in recognition of the distress and inconvenience cause by Creation dismissing Mr S's claim when it ought to have been evident to Creation the complaint was not time-barred.

\*Where Mr S cannot provide all the details of his meter readings, electricity bills and/or FIT benefits, Creation Consumer Finance Ltd trading as Creation.Co.Uk should complete the calculation using known and reasonably assumed benefits.

\*\* If Creation Consumer Finance Ltd trading as Creation.Co.Uk considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 June 2024.

Phillip Lai-Fang  
**Ombudsman**