DRN-4583311

The complaint

Ms T is unhappy with Creation Consumer Finance Ltd.'s ('Creation') response to a claim she made under s.75 of the Consumer Credit Act 1974 (the 'CCA') and an unfair relationship she claims to have with Creation taking into account s.140A of the CCA.

What happened

On 8 July 2014 Ms T entered into a contract with an installer ('P') to supply and fit a solar panel system. She paid for the panels using a fixed sum loan from Creation.

The price of the panels was £8,995 and this plus the additional costs of the loan (interest of £5,032.40 and an arrangement fee of £135) made the total amount payable £14,162.40.

Ms T via her representatives sent a letter before claim to Creation on 26 October 2021 to propose claims under s.75 for breach of contract and misrepresentation by P and arising out of an unfair relationship under s.140A of the CCA. She said she was led to believe the electricity savings and FIT payment income from the panels would cover the costs of the loan she'd taken out and leave her with a profit but in fact, there was a shortfall between the cost of the loan payments and the benefits, causing her a financial loss.

She said she had not been made aware that Creation had been paid commission on the sale, which was a breach of fiduciary duty, Creation had failed to ensure P observed the relevant codes at the time of sale, and insufficient checks had been carried out to make sure she could afford the repayments on the loan.

In response to Ms T's letter before claim Creation sent a final response letter dated 11 November 2021 treating the matter as a complaint and declining to take further action on the basis that it considered Ms T had brought her complaint out of time as the event she was complaining about happened more than six years ago or more than three years from when the complainant ought to have reasonably been aware of the matters giving rise to the complaint.

Dissatisfied with Creation's response Ms T referred a complaint to our service about the s.75 claim and the alleged unfair relationship under s.140A on 22 November 2021.

I issued a provisional decision on 18 December 2023 setting out why I planned to uphold Ms T's complaint. I said the following:

> ***Our approach to our jurisdiction to consider the complaint***
>
> *Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (the 'FSMA') and in rules and guidance contained in the FCA's Handbook known as DISP.*

These form part of the FCA Handbook. The rules surrounding time limits are set out in DISP 2.8.2R which include that:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent the complainant its final response, redress determination or summary resolution communication; or

(2) more than:

(a) six years after the event complained of; or (if later)
(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received"

Further, DISP 2.3.1R sets out the activities which I can consider under our compulsory jurisdiction and within scope are complaints which relate to acts or omissions by firms in carrying on one or more regulated activities (see DISP 2.3.1R(1)).

I'll first consider our service's jurisdiction to look at Ms T's s.75 and s.140A complaints before turning to address their merits.

My findings on jurisdiction

(1) Jurisdiction to look at the s.75 complaint

Where Creation is exercising its rights and duties as a creditor under a credit agreement it is carrying on a regulated activity within the scope of our compulsory jurisdiction under Article 60B(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the 'RAO').

In undertaking that activity, the creditor must honour liabilities to the debtor. So, if a debtor advances a valid s.75 claim in respect of the credit agreement, the creditor has to honour that liability and failing or refusing to do so comes under our compulsory jurisdiction.

The event complained of here is Creation's allegedly wrongful rejection of Ms T's s.75 claim on 11 November 2021. Ms T brought her complaint about this to the ombudsman service on 22 November 2021. So, her complaint in relation to the s.75 claim was brought in time for the purposes of our jurisdiction.

(2) Jurisdiction to look at the complaint about an unfair relationship under s.140A

Ms T is able to make a complaint about an unfair relationship between her and Creation per s.140A. The event complaint of for the purposes of DISP 2.8.2R(2)(a) is Creation's participation, for so long as the credit relationship continues, in an allegedly unfair relationship with her.

This accords with the court's approach to assessing unfair relationships – where if the credit relationship is continuing an assessment of whether a relationship is unfair

is made as at the date of assessment, and if the credit relationship has ended, as at the date the relationship ended: Smith v Royal Bank of Scotland plc [2023] UKSC 34.

In this case the relationship was ongoing at the time it was referred to the ombudsman service on 22 November 2021 (and still is) so the complaint has been brought in time for the purposes of DISP 2.8.2R(2)(a). I am satisfied that I have jurisdiction to consider the complaint about the alleged unfair relationship per s.140A in the circumstances.

Merits

(1) My findings on the merits of the s75 complaint

Creditors have no means of knowing what s.75 liabilities they may have, nor of investigating such liabilities nor of recovering them from suppliers, unless or until debtors raise s.75 claims against them; and (as I have explained above) raising the claim, if it's a valid one, brings the creditor under a duty then to honour its liability.

But it would not be fair or reasonable to require a creditor to respond to s.75 claims however long in the past they arose. And our service must decide complaints on the basis of what is fair and reasonable in all the circumstances of a case.

The law imposes a six-year limitation period on the relevant claims, after which they become time barred. Taking into account this time period, the particular nature of liability under s.75, and the need for the debtor to raise a s.75 claim against their creditor before any a cause for complaint to our service can arise, I consider it is fair and reasonable for a creditor not to have to look into or honour a s.75 claim that was first raised with it by the debtor after the claim had become time barred under LA. This is in line with our service's long-standing approach to complaints under s.75.

The alleged misrepresentation cause of action arose when an agreement was entered into on 8 July 2014 based on the alleged misrepresentations. The alleged breach of contract isn't defined but I take it to be that P (acting on behalf of Creation) warranted that the solar panel system it agreed to provide had the capacity to finance the loan repayments, when that was incorrect. As such, the breach of contract also occurred as soon as the agreement was entered into.

In these circumstances Ms T had brought her s.75 claim to Creation on 26 October 2021 which is more than six years after she entered into an agreement with them on 8 July 2014 which I consider to be around the time when the causes of action for misrepresentation and breach of contract to have accrued.

Where it is unlikely a claim against the supplier could succeed due to the expiry of the likely relevant limitation periods of six years, I am persuaded that it was fair and reasonable for Creation to decline the s.75 claim. So, I do not uphold this aspect of the complaint.

(2) My findings on the merits of the complaint about an unfair relationship under s.140A

I've considered whether representations and contractual promises by P can be considered under s.140A.

Therefore, I have considered the Court of Appeal's judgment in Scotland & Reast v British Credit Trust [2014] EWCA Civ 790 ('Scotland'), which said the following when considering what could be relevant to an unfair relationship claim under s.140A:

"In this regard it is important to have in mind that the court must consider the whole relationship between the creditor and the debtor arising out of the credit agreement and whether it is unfair having regard to one or more of the three matters set out in s.140A(1), which include 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 of relevant and important aspects of the transaction seem to me to fall squarely within the scope of this provision."

Scotland makes it clear that relevant matters would include misrepresentations and other false or misleading statements as to relevant and important aspects of a transaction.

s.56 of the CCA has the effect of deeming P to be the agent of Creation in any antecedent negotiations, and so Creation is responsible for the antecedent negotiations P carried out direct with Ms T.

I think the negotiations in this case were antecedent because they preceded the relevant conclusion of the agreement. The scope of 'negotiations' and 'dealings' is wide. And 'representations' covers statements of fact, contractual statements and other undertakings.

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 unfair relationship those negotiations and arrangements by P for which Creation were responsible under s.56 when considering whether it is likely Creation had acted fairly and reasonably toward Ms T.

But in doing so, I should take into account all the circumstances and consider whether a Court would find the relationship with Creation was unfair under s140A.

<u>What happened?</u>

When speaking to our investigator, Ms T said that she was told by the representative of P that the benefits of the panels (energy generated and FIT payments) would quickly cover her electricity usage and her loan costs. Ms T says she was told the panels would start paying for themselves within three years.

Ms T said she was given a table to illustrate the benefits of the panels over a 25-year period. I've seen this and it appears to support what Ms T said she was told about the panels. The table shows that although the panels would generate less benefit than the cost of Ms T's electricity bills in the first two years (albeit by relatively small sums), by the third year they would generate a 'profit' which would increase every year thereafter.

On the basis of those calculations the table suggested the deficit from the first two years would be clawed back by the profit from the following three years and from year five the panels would effectively be paying for themselves with an additional 'profit' until the end of the loan agreement. There is nothing on the table which appears to qualify the information in any way – for example it doesn't say it is an estimate or that it is subject to certain external criteria being met.

So having considered Ms T's account about what happened when she spoke to P, I find this to be credible and persuasive and supported by the available documentary evidence.

I think it is unlikely that Ms T would've agreed to the solar panel system and a loan with Creation unless she'd been led to believe that it would become self-funding and come at no additional cost to her overall. Creation has not supplied any evidence or reasoning to challenge Ms T's account, or the documentation supplied. Therefore, I consider Ms T's account persuasive and I accept her version of events.

For the solar panels to start paying for themselves within three years as Ms T says she was told, they would need to cover the costs of the loan and Ms T's cash payment and produce combined savings and fit income of over £1,420.46 per year. I have not seen anything to indicate Ms T's system was not performing as expected but Ms T's system has not produced this. So, these statements were not true.

I think the salesman from P must reasonably have been aware that Ms T's system would not have produced benefits at this level. Whilst there are elements of the calculations that had to be estimated, the amount of sunlight as an example, I think the salesman would have known that Ms T's system would not produce enough benefits to cover the overall cost of her panels in the timescales stated in the documentation or verbally to Ms T.

Considering Ms T's account about what she was told, and the documentation she was shown at the time of the sale, I think it likely P gave Ms T a false and misleading impression of the self-funding nature of the solar panel system.

The salesman, acting in a position of knowledge about the effectiveness of the panels, must reasonably have been aware that they would not pay for themselves in the way
Ms T was led to believe. I've not seen anything to demonstrate Ms T decided to purchase the solar panel system for anything other than the cost savings this would produce for her on her energy bills. And as I have found, the system would not actually produce the savings she was led to believe she would receive within the time explained by the salesman or in the documentation.

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

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

Where Creation is to be treated as responsible for P's negotiations with Ms T 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 be likely to conclude that because of this the relationship between Ms T and Creation was unfair. Because of this shortfall between her costs and the actual benefits, each month she has had to pay more than she expected to cover the difference between her solar benefits and the cost of the loan. So, clearly Creation has benefitted from the interest paid on a loan she would otherwise have not taken out.

Therefore, I am persuaded taking into account the court's approach that Creation has not treated Ms T fairly or reasonably in all the circumstances of the complaint. I consider the fairest way to address this is to resolve the matter as I set out below.

In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Ms T and Creation's relationship arising out of P's misleading and false assurances as to the self-funding nature of the solar panel system. I intend to require Creation to repay Ms T a sum that corresponds to the outcome she could reasonably have expected as a result of P's assurances. That is, that Ms T's loan repayments should amount to no more that the financial benefits she receives 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 Ms T received from the solar panel system over the 10-year term of the loan, so she pays no more than that. To do that, I think it's important to consider the benefit Ms T received by way of FIT payments as well as through energy savings. Ms T will need to supply up to date details of all FIT benefits received, electricity bills and current meter readings to Creation. Ms T should let us know in response to this provisional decision if she's unable to supply any of the relevant FIT benefits, electricity bills and meter readings, and the reasons why.

I intend to tell Creation to:

- *Calculate the total payments (the deposit and monthly repayments) Ms T has made towards the solar panel system up until the date of settlement - A*
- *Use Ms T's bills and Fit statements, to work out the benefits she received up until the date of settlement - B*
- *Use B to recalculate what Ms T would have paid each month towards the loan over that period and calculate the difference, between what she actually paid (A), and what she should have paid, applying 8% simple interest to any overpayment from the date of payment until the date of settlement – C*
- *Reimburse C to Ms T*
- *Use Ms T's bills and Fit statements, to work out the benefits she 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 accordingly over the remaining term of the loan.'*

Creation disagreed with my provisional decision and responded on 15 January 2024 to explain its position that:

- The complaint was brought more than six years after the events complained of, so outside the time limits which apply to the jurisdiction of the Financial Ombudsman Service (the 'ombudsman service').

- Ms T's allegations of an unfair relationship do not relate to any events post-dating the sale of the solar panel system on or around 8 July 2014.

- The end of a credit relationship may be the starting point for limitation purposes in civil litigation but it isn't the starting point for the six-year period under DISP 2.8.2R(2)(a), where the unfair relationship itself would not constitute an event. It is

the event(s) giving rise to an unfair relationship which are the 'events complained of' for the purposes of that rule.

- Ms T had not brought a complaint about Creation's handling of her s75 claim. Creation explained it had no record of receiving such a complaint and did not issue a final response letter in relation to one.

- Creation considers my analysis conflates the jurisdiction rules on the ombudsman service's time limits for bringing complaints under DISP 2.8.2R(2)(a) and DISP 2.8.2R(1). They consider my approach allows any complainant to bring an otherwise time-barred claim in time by complaining about the decision not to uphold the complaint.

- Without prejudice to its position on jurisdiction it considers my approach to redress should be in accordance with the Court's decision in *Hodgson v Creation Consumer Finance Limited* [2021] EWHC 2167 (Comm) ('Hodgson*').*

Ms T provided some additional energy bills and FIT statements but provided no new comments or evidence in response to my provisional decision.

Therefore, the complaint was referred back to me for a 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.

In summary, my conclusions are that:

- I do have jurisdiction to consider Ms T's complaint, both in respect of the allegations of an unfair relationship under s.140A and the refusal by Creation to accept and pay her s.75 claim.

- I don't consider the complaint about the s.75 claim to have merit because I am satisfied it would have been fair and reasonable for Creation to reject that claim on the basis relevant limitation periods would have expired, providing Creation a defence to the s.75 claim under the Limitation Act 1980 (the 'LA').

- I uphold the complaint alleging that Creation was party to an unfair relationship with Ms T under s.140A.

- Fair compensation in the particular circumstances of this complaint should be based upon fulfilling the assurance given to Ms T that the system would be self-funding.

- Where Ms T has not been able to provide all of the details of her meter readings, electricity bills and/or FIT benefits, I am satisfied she has provided sufficient information in order for Creation to complete the calculation I have directed it follow in the circumstances by using known and reasonably assumed benefits.

Jurisdiction over the complaint about the s.75 claim

The ombudsman service's jurisdiction over complaints that a business is liable under s.75 is based upon the lender's failure to honour its liability when the borrower makes a valid claim under that section. When a borrower under a regulated credit agreement seeks payment

from the lender of the damages he or she has suffered under a connected transaction because of something done or said by the supplier, the lender may or may not have a liability to the borrower under s.75.

But if the borrower's claim is valid, the lender should honour its liability – and its failure to do so is a matter to which the financial ombudsman's jurisdiction extends. That is because it is part of the lender's regulated activities to exercise its duties under a regulated credit agreement – and a complaint about a firm's acts or omissions in carrying on a regulated activity (or any ancillary activity carried on by the firm in connection with a regulated activity) come within our jurisdiction under DISP 2.3.1R.

Creation argues that the event complained of when the matter is brought to our service occurred as and when the supplier caused the alleged s.75 liability to arise in the first place. I disagree: the lender's s.75 liability in damages doesn't arise as a result of any act or omission of the lender in performing a regulated activity – it is simply a claim given by statute to the borrower against the lender. And it arises from the acts or omissions of a third party, the supplier. Only when and if grounds for a claim are presented by the borrower to the lender must the lender do anything about it, which (as I have said) is to honour its statutory liability by paying the claim if it is a valid one. Until then, the lender's acts and omissions are simply to have lent money to the borrower at the borrower's request, and that is not the matter complained about.

So, when a borrower brings a complaint to our service alleging that they were due money under s.75 which the lender has refused to pay, the "event complained of" in such circumstances isn't the supplier's conduct; it is the lender's refusal to honour its alleged statutory liability when the borrower made the claim.

In this case, Creation rolled up its consideration of Ms T's s.75 claim into a letter that both explained why it would not be paying the claim and treated Ms T as having brought a complaint which she was entitled to refer to our service. So, its refusal to accept and pay the s.75 claim was contained in a final response letter of 11 November 2021, in which it told Ms T she could refer her complaint to our service within 6 months.

In those circumstances, because Creation's letter dated 11 November 2021 rejected Ms T's claim under s.75 (which Ms T says is valid) it constituted "the event complained of". It also set out Creation's response to any complaint that flowed from this and invited Ms T to refer that complaint to our service if she was dissatisfied with the outcome.

Creation could have separated those stages, waited for Ms T to complain that the s.75 claim had not been accepted and honoured, and only then issue its final response letter. Instead, it followed the same practice that many other lenders adopt by allowing Ms T to refer the matter directly to the financial ombudsman service, by way of treating it as a complaint.

Creation argues that Ms T didn't complain to it about the manner in which it dealt with her s.75 claim, and that it has never responded to such a complaint. But, that ignores the fact that it was Creation's choice to roll the answer to the s.75 claim into a final response letter in the way that I've described. That was a reasonable and pragmatic way of proceeding, because the issues between the parties on this part of Ms T's complaint were whether it was fair and reasonable for Creation to reject Ms T's s.75 claim, as they remain to this day.

Creation also refers to DISP 2.8.1R(1) in their response to my provisional decision which provides a complaint can only be considered if the respondent has sent the complainant its final response (or summary resolution communication). However, Creation did send Ms T a final response letter on 11 November 2021.

After the complaint was referred by Ms T to the ombudsman service on 22 November 2021, we wrote to Creation on 30 November 2021 providing details of the complaint as submitted to the ombudsman service, including details of Ms T's complaint about the s.75 claim. If Creation's position had been that it denied it received any such complaint, it could have raised this with the ombudsman service at the time, but it did not. Instead, on 9 December 2021 it provided information concerning its position on the complaint. It was apparent from this correspondence that, in relation to s.75, Ms T's complaint was that Creation had a liability to her which it was declining to pay.

So, even if no final response had been issued in respect of the complaint about s.75, in accordance with DISP 2.8.1R(2), Creation has had well over eight weeks to respond to the complaint and our service is entitled to deal with it.

There has been no conflation with the six-month time limit under DISP 2.8.2R(1) in this regard. That Creation refused to accept the s.75 claim within a final response letter does not give rise to any difficulties calculating when time begins to run under DISP 2.8.2R(2)(a).

In any event, Creation's points around our jurisdiction to consider the complaint about the s.75 claim are somewhat academic, as I have not upheld this aspect of the complaint on the merits.

Merits of the complaint about the s.75 claim

On the merits of the complaint, I remain persuaded it was fair and reasonable for Creation not to have accepted and paid Ms T's s.75 claim, because the relevant limitation periods for the alleged misrepresentation(s) and/or breach(es) of contract of the supplier had expired before Ms T first brought her s.75 claim to Creation.

Jurisdiction over the complaint about an unfair relationship under s.140A

I have also considered Creation's arguments in its response to my provisional decision on our jurisdiction over the complaint about an unfair relationship under s.140A. Again, I am satisfied this aspect of the complaint was brought in time so that the ombudsman service had jurisdiction.

Section 140A doesn't impose a liability to pay a sum of money in the same way as s.75. Rather, it sets out the basis for treating relationships between creditors and debtors as unfair. Under s.140A a court can find a debtor-creditor relationship is unfair because of the terms of the credit agreement and any related agreement, how the creditor exercised or enforced their rights under these agreements, and anything done or not done by the creditor or the supplier on the creditor's behalf before or after the making of the credit agreement or any related agreement. A court must make its determination under s.140A with regard to all matters it thinks relevant, including matters relating to the creditor and matters relating to the debtor.

The High Court's judgment in *Patel v Patel* [2009] EWHC 3264 QB established that determining whether the relationship complained of was unfair has to be made *"having regard to the entirety of the relationship and all potentially relevant matters up to the time of making the determination"*. The time for making determination in the case of an existing relationship is the date of trial, if the credit relationship is still alive at trial, or otherwise the date when the credit relationship ended. This judgment has recently been approved by the Supreme Court in *Smith v Royal Bank of Scotland Plc* [2023] UKSC 34 ('Smith').

Throughout the period of the credit agreement, a creditor should conduct its relationship with the borrower fairly, including by taking corrective measures. In particular, the creditor should

take the steps which it would be reasonable to expect it to take in the interest of fairness to reverse the consequences of unfairness, so that the relationship can no longer be regarded as unfair: see Smith at [27]-[29] and [66]. Whether that has, or has not, been done by the creditor is a consideration in whether such an unfair relationship was in existence for the purposes of s.140A when the relationship ended.

In other words, determining whether there is or was an unfair credit relationship isn't just a question of deciding whether a credit relationship was unfair when it started. The question is whether it was still unfair when it ended; or, if the relationship is still on foot, whether it is still unfair at the time of considering its fairness. That requires paying regard to the whole relationship and matters relevant to it right up to that point, including the extent to which the creditor has fulfilled is responsibility to correct unfairness in the relationship.

Therefore, in the present case, for as long as the credit agreement with Ms T remains outstanding, Creation is responsible for the matters which make its relationship with Ms T unfair and for taking steps to remove the source of that unfairness or mitigate its consequences so that the relationship is no longer unfair. By relying in her complaint on the unfairness of the credit relationship between herself and Creation, Ms T is therefore complaining about an event which is continuing, namely that Creation is participating in and perpetuating an ongoing unfair credit relationship with her.

So, taking into account DISP 2.8.2R(2)(a), I am satisfied – where Ms T's credit relationship with Creation is continuing – that she is not prevented from bringing her complaint to the ombudsman service by the 'six-year' rule. I am otherwise satisfied the complaint is within the ombudsman service's jurisdiction to consider.

In these circumstances, I don't consider it necessary to consider whether Ms T's complaint has been brought in time for the purposes of the alternative three-year rule under DISP 2.8.2R(2)(b).

Merits of the complaint about an unfair relationship under s.140A

Creation has not responded in respect of the merits of the complaint about an unfair relationship except to the extent it has requested I adopt the approach in Hodgson when determining what is fair compensation, if I uphold the complaint.

I remain of the view expressed in my provisional decision that the complaint about an unfair relationship should be upheld for the same reasons I expressed in my provisional decision. In summary, I am persuaded that Creation is participating in, and continues to perpetuate, an unfair relationship with Ms T which has arisen out of P's misleading and false assurances as to the self-funding nature of the solar panel system.

I am also satisfied the approach to fair compensation which I set out in my provisional decision remains the fair and reasonable way of resolving Ms T's complaint.

I consider P's misleading presentation of the package of solar panels and financing went to an important aspect of the transaction for the system, namely the benefits which Ms T was expected to receive. P's assurances in this regard likely amounted to a contractual promise that the solar panels would have the capacity to fund the loan repayments. But, even if they did not have that effect, they nonetheless represented the basis upon which Ms T went into the transaction. Either way, P's assurances were seriously misleading and they put Ms T into a position where the financial reality for her was less satisfactory than she had been led to expect.

In my view, the fairest way to put this right is for Creation to repay Ms T a sum that corresponds to the outcome she could reasonably have expected as a result of P's assurances. That is, that Ms T's loan repayments should amount to no more than the financial benefits from the solar panels.

I have considered the Hodgson judgment, but this doesn't persuade me I should adopt a different approach to fair compensation. Hodgson concerned a legal claim for damages for misrepresentation, whereas I'm considering fair redress for a complaint where I consider it likely the supplier made a contractual promise regarding the self-funding nature of the solar panel system, and even if I am wrong about that I am satisfied the assurances were such that fair compensation should be based on Ms T's expectation of what she would receive. I consider Ms T has lost out, and has suffered unfairness in her relationship with Creation, to the extent that her loan repayments to Creation exceed the benefits from the solar panels. On that basis, I believe my determination results in fair compensation for Ms T.

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.

My final decision

For the reasons I have explained I uphold Ms T's complaint. To put things right Creation Consumer Finance Ltd must:

- Calculate the total payments (the deposit and monthly repayments) Ms T has made towards the solar panel system up until the date of settlement – A

- Use Ms T's bills and Fit statements, to work out the benefits she received up until the date of settlement* – B

- Use B to recalculate what Ms T should have paid each month towards the loan over that period and calculate the difference, between what she actually paid (A), and what she should have paid, applying 8% simple interest to any overpayment from the date of payment until the date of settlement** – C

- Reimburse C to Ms T

- Use Ms T's bills and Fit statements, to work out the benefits she 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.

*Where Ms T has not been able to provide all the details of her meter readings, electricity bills and/or FIT benefits, I am satisfied she has provided sufficient information in order for Creation to complete the calculation I have directed it follow in the circumstances using known and reasonably assumed benefits.

** If Creation Consumer Finance Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms T how much it's taken off. It should also give Ms T a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 11 April 2024.

Michael Ball
Ombudsman