

The complaint

Mr L has complained about Mitsubishi HC Capital UK Plc trading as Hitachi Capital Consumer Finance (“Mitsubishi”)’s response to a claim he made under Section 75 (‘s.75’) of the Consumer Credit Act 1974 (the “CCA”) and in relation to allegations of an unfair relationship taking in to account Section 140A (‘s.140A’) of the CCA.

What happened

In May 2014, Mr L bought a solar panel system (“the system”), from a company I’ll call “S”, using a ten-year fixed sum loan from Mitsubishi.

In November 2021, Mr L complained to Mitsubishi through a Claims Management Company. He said that he was told by S that the income and savings from the system would fund the cost of the credit agreement, so he would be no worse off each month. Mr L says that hasn’t happened and he’s suffered a financial loss as a result. He also believed that what happened created an unfair relationship between him and Mitsubishi.

Mitsubishi responded to the complaint to say that Mr L had brought his claim more than six years after the cause of action occurred under the Limitation Act (‘LA’).

Unhappy with Mitsubishi’s response, Mr L referred his complaint to our service. Mitsubishi said we didn’t have jurisdiction to consider the complaint because the events complained about were too long ago.

Our Investigator considered Mr L’s complaint, they ultimately thought that:

- Given the s.75 claim was more likely to be time barred under the LA, Mitsubishi’s answer seemed fair.
- The s.140A complaint was one we could look at under our rules and that it had been referred in time.
- Misrepresentations could be considered under s.140A.
- A court would likely find an unfair relationship had been created between Mr L and Mitsubishi.

Our Investigator recommended that Mr L keep the system and Mitsubishi take into account what Mr L had paid so far, along with the benefits he received, making sure the system was effectively self-funding.

Mr L accepted the investigator’s view.

Mitsubishi maintained that the claim was out of time and outside of our jurisdiction (due to the time limits that apply) and that if we did uphold the complaint the recommended redress was too generous bearing in mind a recent court decision, known as “Hodgson”.

I issued a provisional decision explaining that I was not planning to uphold the complaint. Briefly this was because the sales documents contradicted Mr L’s recollection of what he

was told, and I thought it was likely that the discussion at the time was more likely to have matched what was shown in the sales documents.

Neither Mitsubishi nor Mr L provided anything further for me to consider by the deadline I gave.

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.

With no other evidence to consider, my final decision matches my provisional one. I've decided not to uphold this complaint.

My findings on jurisdiction

I'm satisfied I have jurisdiction to consider Mr L's complaint, both in respect of the refusal by Mitsubishi to accept and pay his s.75 claim and the allegations of an unfair relationship under s.140A.

The s.75 complaint

The event complained of here is Mitsubishi's alleged wrongful rejection of Mr L's s.75 claim on 10 November 2021, this relates to a regulated activity under our compulsory jurisdiction. Mr L brought his complaint about this to the ombudsman service on 16 December 2021. So, his complaint in relation to the s.75 claim was brought in time for the purposes of our jurisdiction.

The unfair relationship under s.140A complaint

The event complained of here is Mitsubishi's participation, for so long as the credit relationship continued, in an alleged unfair relationship with Mr L. Here the relationship was ongoing at the time the complaint was referred to the Financial Ombudsman Service on 16 December 2021. So, the complaint has been brought in time for the purposes of our jurisdiction.

My findings on the merits of the complaint

The s.75 complaint

The law imposes a six-year limitation period on claims for misrepresentation and breach of contract, after which they become time barred.

In this case the alleged cause of action arose when an agreement was entered into on 10 May 2014. Mr L brought his s.75 claim to Mitsubishi on 2 November 2021. That is more than six years after he entered into the agreement. Given this, I think it was fair and reasonable for Mitsubishi to have not accepted the s.75 claim. So, I do not uphold this aspect of the complaint.

The unfair relationship under s.140A complaint

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

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

The evidence and my reasons for not upholding the complaint

Mr L has said that he was told by S's representative that the income and savings from the system would fund the cost of the credit agreement, so he would be no worse off each month – basically that the benefits would cover the monthly loan repayments from the start. I've looked at the documents from the time of sale to see if this supports or contradicts what he has said.

The sales contract shows the purchase price of the system was £8,000.00, that it would generate 3,560 kWh per year, and this would result in total benefits of £881.64 in year one. So, at the time Mr L entered the contract, he'd been given written information about the first year benefit he would receive. In light of this, I think it is likely that any discussion of the benefits would've matched what was written down. Especially given this was handwritten onto the contract on a page that Mr L signed.

The credit agreement, signed nine days later, shows that Mr L agreed to a ten-year loan with monthly repayments of £103.43 and a total amount payable of £12,411.60. A simple calculation confirms that this equates to £1,241.16 per year.

So, it appears to me that, on signing the credit agreement, Mr L ought to have been aware that he would be paying £1,241.16 per year in exchange for benefits starting at £881.64 in the first year – significantly less than his loan repayments in that period. With this in mind, it seems implausible that the salesperson would've told Mr L that the system would provide benefits such that he would be no worse off each month.

Overall, I think it is unlikely that a Court would conclude that the relationship between Mitsubishi and Mr L was unfair on him. So, I see no compelling reason to uphold this complaint.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 29 July 2024.

Phillip Lai-Fang
Ombudsman