

The complaint

Mr C has complained about Creation Consumer Finance Ltd's ("Creation") response to a claim he made under the Consumer Credit Act 1974 (the "CCA") and his request for money back.

What happened

In March 2013, Mr C bought a solar panel system ('the system') from a company I'll call "S" using a 10-year fixed sum loan from Creation. The agreement set out the amount of credit is £10,795 and it was to be paid back with one instalment of £214.55, followed by 118 instalments of £139.55 and a final instalment of £214.55. The total amount payable was £16,896 including a £75 administration fee and a £75 final instalment fee.

From what I've seen, S guaranteed the income Mr C was to receive through the government's Feed in Tariff (FIT) payments based on the expected yield of his system. So S agreed to make up any difference if his returns fell below the expected calculation. I can see S paid Mr C £124.30 in May 2014 and £57.14 in May 2015. Mr C said these were the only two payments he received before S ceased trading.

I understand Mr C settled the loan in March 2023. The previous month (February 2023) he contacted the ombudsman service to raise a claim and complaint against Creation. In summary, he said:

- S contacted him about solar panels. He agreed to purchase the system because S told him it would be entirely self-funding.
- S told him his energy bills would reduce and his loan payments would be covered by the savings and benefits he'd receive.
- He was reassured because S offered a warranty on the system.
- S didn't give him enough time to go through the paperwork, and he was encouraged to sign the paperwork while the salesperson was there.
- S is no longer trading so the system isn't covered by the warranty.
- In 2017 he was told by another company he should take steps to enhance the performance of the system.

Creation responded in March 2023 and said the section 75 ("s.75") claim was raised outside of time.

Mr C wasn't happy with the response. In summary he said he thought the point of misrepresentation happened a few years after the point of sale. He said he'd seen similar cases that had been upheld and that he thought S had misled him. He asked the ombudsman service to investigate.

One of our investigators looked into things and said, in summary:

- A s.75 claim was more likely to be time barred under the Limitation Act 1980 (the "LA") and so Creation's answer broadly seemed fair.

- She could consider whether the alleged misrepresentations could have created an unfair relationship between Mr C and Creation under section 140A (“s.140A”) of the CCA.
- She found that a complaint about an unfair relationship was one we could look at under our rules and that it had been referred in time.
- A court would likely find an unfair relationship had been created between Mr C and Creation.

She recommended that Mr C keep the system and Creation take into account what Mr C had paid so far, along with the benefits (including the two payments I’ve mentioned above) he received, making sure the system was effectively self-funding over the original loan term. She also recommended Creation pay Mr C £100 compensation for not looking into the s.140A claim.

I issued a provisional decision that set out my provisional thoughts on our jurisdiction to consider the complaint as well as the merits of the complaint. I also issued a subsequent jurisdiction decision saying why I thought the complaint was within our jurisdiction, so I won’t go over that again. For the merits of the complaint, my provisional decision said:

Merits

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 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 S for which Creation were responsible under s.56 when considering whether it is likely Creation had acted fairly and reasonably towards Mr C.

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 C says he was verbally misled that the system would effectively pay for itself. So I’ve taken account of what Mr C says he was told. I’ve also reviewed the documentation that I’ve been supplied.

The fixed sum loan agreement Mr C signed sets out the amount being borrowed; the interest charged; the total amount payable; the term; and the contractual monthly loan repayments. I think this was set out clearly enough for Mr C to be able to understand what was required to be repaid towards the agreement. But it doesn’t set out any of the estimated benefits of the system.

Mr C has also supplied another form he was given by S titled income and savings. This form sets out:

	Now	20 years' time
Feed in Tariff	£451.16	£1,197.14
Energy Exported	£65.75	£174.44
Energy used	£210.38	£1,415.42
Total annual savings	£727.29	£2,787
Return on investment	6.74%	25.82%

The form set out the investment cost was £10,795 and the cumulative benefits were £31,201. It also set out the payback year was year 10. The income and savings form doesn't, however, include details of the interest Mr C would need to pay under the finance agreement. It was signed a week or so before Mr C signed the fixed sum loan. But based on the figures on the form I can see why Mr C was led to believe the system would be self-funding within the loan term. While the first-year annual savings indicated it wouldn't have covered the loan cost for that year, the form indicated those savings would grow to over £2,700 – significantly more than the annual cost of the loan. I think it would have taken several years for Mr C to realise the system wouldn't be self-funding within the loan term based on what he was told. The form says it was a 10-year payback time – the same period as the finance agreement Mr C went on to sign. And even with interest being applied and Mr C being asked to pay back around £16,900 in total, given the estimated 20-year benefit was over £31,000 and taking into account the guarantee S was offering, I can understand why he felt the system would be self-funding within the loan term. I think it should have been made clearer the payback time was not applicable if the system was paid for using a finance agreement.

I'm of the opinion that all of the above information supports Mr C's testimony.

Creation hasn't provided evidence to dispute what Mr C said happened. Mr C left the meeting having agreed to an interest-bearing loan, with a monthly repayment of £139.55, payable for 10 years. Given his plausible testimony and the financial burden he took on I find Mr C's account of what he was told by S, credible and persuasive. The loan is a costly long-term commitment, and I can't see why he would have seen this purchase appealing had he not been given the reassurances he's said he received from S.

For the solar panels to pay for themselves, they would need to produce combined savings and FIT income of over £1,600 per year. Mr C's system looks like it might be slightly underperforming. However, importantly here I don't think the system would provide enough benefit to be self-funding within the term of the loan. So, these statements were not true. I think S's representative must reasonably have been aware that Mr C'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 S's representative would have known that Mr C's system would not produce enough benefits to cover the overall cost of the system in the timescales stated verbally to Mr C.

Considering Mr C's account about what he was told, the documentation, and that Creation hasn't disputed these facts, I think it likely S gave Mr C a false and misleading impression of the self-funding nature of the solar panel system.

I consider S's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr C was expected to receive by agreeing to the installation of the system. I consider that S'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 Mr C went into the transaction. Either way, I think S's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr C'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 S's negotiations with Mr C 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 C 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 he would otherwise have not taken out.

The s.75 complaint

Given my above conclusions and bearing in mind the purpose of my decision is to provide a fair outcome quickly with minimal formality, I don't think I need to provide a detailed analysis of Mr C's s.75 complaint. Furthermore, this doesn't stop me from reaching a fair outcome in the circumstances.

Fair compensation

In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Mr C and Creation's relationship arising out of S's misleading and false assurances as to the self-funding nature of the solar panel system.

Therefore, Creation should repay Mr C a sum that corresponds to the outcome he could reasonably have expected as a result of S's assurances. That is, that Mr C's loan repayments should amount to no more than the financial benefits he received for the original term of the loan agreement.

Therefore, to resolve the complaint, Creation should recalculate the agreement based on the known and assumed savings and income Mr C received from the system over the 10-year term of the loan, so he pays no more than that. To do that, I think it's important to consider the benefit Mr C received by way of FIT payments as well as through energy savings, and the two payments he received direct from S. Mr C will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to Creation.

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 failure to fully deal with Mr C's s.140A claim or complaint caused Mr C 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 C £100.

Mr C had nothing further to add, and I can't see we received a response from Creation.

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.

Seeing as though neither party has submitted anything new for me to consider, I see no reason to depart from the conclusions I reached in my provisional decision.

My final decision

For the reasons I have explained I uphold Mr C's complaint and direct Creation Consumer Finance Ltd to:

- Calculate the total payments Mr C has made towards the solar panel system up until the date of settlement of his complaint – A
- Use Mr C's bills and FIT statements (and the two payments I've mentioned in the background totaling £181.44), to work out the benefits he received up until the loan term* – B
- Use B to recalculate what Mr C 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 annual interest to any overpayment from the date of each payment until the date of settlement of his complaint** – C
- Reimburse C to Mr C
- Pay Mr C £100 for trouble and upset caused

*Where Mr C has not been able to provide all the details of his meter readings, electricity bills and/or FIT benefits, I am satisfied he has provided sufficient information in order for Creation to complete the calculation I have directed it to 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 Mr C how much it's taken off. It should also give Mr C 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 C to accept or reject my decision before 1 October 2024.

Simon Wingfield
Ombudsman