

## The complaint

Mr T 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 October 2014, Mr T bought a solar panel system ('the system') for £8,845 from a company I'll call "E" using a 10-year fixed sum loan from Creation. The agreement sets out the monthly payments are £114.34 and the total charge for credit is £4,875.80. The total amount payable under the agreement is £13,720.80.

In May 2023 Mr T raised a claim and complaint with Creation. In summary, he said E sold the system by promising significantly reduced energy bills and income from the government's Feed in Tariff (FIT) payments that would result in a significant profit over 20 years. He said he'd had the panels for just under 10 years and continued with the finance agreement. He said the system had so far cost around £13,000 and he'd only received £200 – £300 income per year from it. He said E had gone out of business, and that he didn't think the panels were working properly. He was unhappy he was at a loss. He said Creation shouldn't have offered finance for products like this that would never yield the promises that were made.

Creation sent a final response letter in May 2023. It said it wasn't considering Mr T's claim because it had been brought out of time.

Mr T referred his complaint to the Financial Ombudsman in September 2023. One of our investigators looked into things and said, in summary:

- A section 75 ("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 T 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 T and Creation.

She recommended that Mr T keep the system and Creation take into account what Mr T had paid so far, along with the benefits he received, making sure the system was effectively self-funding over the original loan term. She also recommended Creation pay Mr T £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:

### The unfair relationship under s.140A complaint

When considering whether representations and contractual promises by E 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 E 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 E for which Creation were responsible under s.56 when considering whether it is likely Creation had acted fairly and reasonably towards Mr T.

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 T says he was verbally misled that the system would effectively pay for itself. So I've taken account of what Mr T says he was told. I've also reviewed the documentation that I've been supplied.

The fixed sum loan agreement 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 T 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 T has also supplied details of an energy assessment survey that was carried out. There's a section for potential income and savings that sets out:

Income from feed in tariff year 1	£197.77
Savings from electricity used year 1	£105.90
Income from export tariff year 1	£32.80
Total potential benefits year 1	£336.47
Total potential benefits over 20 years	£11,174
Total cost of system	£8,845

The form has another section titled 'Additional Products (not part of your solar assessment calculations)' that has boxes ticked for 'Passivsystem; voltage optimiser; and LED bulbs'. This sets out a potential 25-year savings of £22,091.

Mr T said when he questioned the savings, E's representative supplied handwritten projections to explain a bit more about how it would work. Mr T has supplied the handwritten set of calculations that appears to be in the same handwriting as the other forms, that said:

Income from solar 20 year	£11,174
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Savings from bundle 20 year	£22,091
Combined savings	£33,265
Cost	£8,845 - £13,720.80
Worst case cost	£19,544

*I think where I've referred to worst case cost above, I think this was meant to mean worst case profit because this is the combined savings less the cost of the system with interest applied (£13,720.80). So I think it's entirely plausible that E led Mr T to believe the system would be self-funding with the loan term. I don't think the documentation clearly sets out that it wouldn't be. The figures weren't presented in one place, they were split over different sections. Plus E gave Mr T a handwritten form that indicated the savings from the solar system would be in addition to savings from the 'bundle'.*

*We asked Mr T more about why he decided to purchase the system. He said he knew nothing about solar panels before E spoke to him. He said E told him the government had to meet certain environmental targets or it'd be fined and that is why the system would create excellent profits. He said the savings made would not only pay for the panels, but he'd be in profit with a minimum total generation of £22,000 over 20 years. He said E told him it would reduce his electric and gas bill. He said he now understands it won't affect the gas, but he was bamboozled by E at the time.*

*Mr T said E also told him that having the system installed would significantly increase his property value because it would be seen as an income generator. He said E put pressure on him to sign up on the day and that it told him the government wouldn't be promising FIT payments for much longer. He said E told him he'd need to hurry if he wanted to proceed.*

*Mr T said at the time he bought the system his household had a combined income of around £63,000 but had monthly commitments of an £800 mortgage; around £500 towards car finance; two credit cards with payments of around £300; utilities of around £250 and insurances of around £200. He said he had two young children at the time and paid monthly nursery fees of around £750. This indicates he already had regular outgoings taking up a large portion of his household income.*

*Creation hasn't provided evidence to dispute what Mr T said happened. Yet with no prior interest Mr T left the meeting having agreed to an interest-bearing loan, with a monthly repayment of £114.34, payable for 10 years. Given his lack of prior interest and the financial burden he took on I find Mr T's account of what he was told by E, 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 E.*

*For the solar panels to pay for themselves, they would need to produce combined savings and FIT income of over £1,350 per year. Mr T has mentioned he doesn't think the system is working properly. But having carried out some calculations I think the system is broadly performing as expected given the expected and actual yield being received. 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 E's representative must reasonably have been aware that Mr 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 E's representative would have known that Mr T's system would not produce enough benefits to cover the overall cost of the system in the timescales stated verbally to Mr T.*

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

*I consider E's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Mr T was expected to receive by agreeing to the installation of the system. I consider that E'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 T went into the transaction. Either way, I think E's assurances were seriously misleading and false, undermining the purpose of the transaction from Mr T'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 E's negotiations with Mr 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 likely conclude that because of this the relationship between Mr T 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 T'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 T and Creation's relationship arising out of E's misleading and false assurances as to the self-funding nature of the solar panel system.*

*Therefore, Creation should repay Mr T a sum that corresponds to the outcome he could reasonably have expected as a result of E's assurances. That is, that Mr T'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 T received (or will receive) 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 T received by way of FIT payments as well as through energy savings. Mr T 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 T's s.140A claim or complaint caused Mr T 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 T £100.*

Mr T accepted the decision. 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 T's complaint and direct Creation Consumer Finance Ltd to:

- Calculate the total payments Mr T has made towards the solar panel system up until the date of settlement of his complaint – A
- Use Mr T's bills and FIT statements, to work out the benefits he received up until the settlement\* – B
- Use B to recalculate what Mr T 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\*\* – C
- Reimburse C to Mr T
- If required, use Mr T's bills and FIT statements to work out the benefits he will receive for the period between the settlement of his 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 or allow Mr T to continue with his current payment so the loan finishes early.
- Pay Mr T an additional £100 compensation

\*Where Mr T 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 T how much it's taken off. It should also give Mr T 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 T to accept or reject my decision before 1 October 2024.

Simon Wingfield  
**Ombudsman**