

## The complaint

Ms C has complained about the way Creation Consumer Finance Ltd (“Creation”) responded to claims she’d made in relation to misrepresentation, breach of contract, and an alleged unfair relationship taking into account section 140A (“s.140A”) of the Consumer Credit Act 1974 (the “CCA”).

Ms C has been represented in bringing her complaint but, to keep things simple, I’ll refer to Ms C throughout.

## What happened

In April 2015 Ms C entered into a fixed sum loan agreement with Creation to pay for a £11,250 solar panel system (“the system”) from a supplier I’ll call “E”. The total amount payable under the agreement was £17,451.60 and it was due to be paid back with 120 monthly repayments of £145.43. There was an interest charge of £6,201.60.

In July 2023 Ms C sent a letter of claim to Creation explaining she thought the system was mis-sold. In summary, she said E cold called her and she agreed to a meeting to discuss the system. She said E made several misrepresentations during the meeting which induced her to enter into the agreement. She said E sold the system as being self-funding. She said she wasn’t given time to consider the paperwork and she came to realise the system isn’t self-funding. She said E told her she’d receive a £500 cheque to help with the first year which was never received. She said the system was misrepresented and believed the statements and several other actions at the time of the sale created an unfair relationship between herself and Creation.

Creation sent a final response letter in August 2023 to say it was dismissing the complaint without consideration because it had been brought out of time.

Unhappy with Creation’s response, Ms C decided to refer her complaint to the Financial Ombudsman in October 2023.

One of our investigators looked into things and thought Ms C ought to have seen the annual loan repayments were more than the estimated benefit amount set out on a form. He thought this form should have allowed her to make a comparison and realise the system wouldn’t be self-funding. He also noted Ms C had raised a complaint about a fault with the system in 2022 and that she didn’t raise any other issues at the time, implying, other than the fault, she was happy with the system. He didn’t make any recommendations.

Creation had nothing further to add. Ms C didn’t agree with this assessment. In summary, she said:

- E promised her the system would pay for itself over time and reiterated it promised her £500 to help with the cost in the first year.
- The estimated benefits document only took into account the first year and E had explained the benefits would increase each year.
- She’d raised further complaints when speaking to Creation in 2022.

- E went out of business in 2016 so she had no one to complain to.
- She'd paused payments while a section 75 ("s.75") claim was being considered and Creation unfairly wanted all payments brought back up to date straight away when works were carried out. (I understand payments are now back up to date.)
- She still had issues registering for FIT with a new energy company.
- She feels let down and that E pressured and confused her into signing contracts. She said E pitched the system sale as being a one-time offer and that she was rushed to sign the agreement.
- E's agent was with her for 5 hours during the first visit and returned several times over the next few days, so she didn't have the chance to use the cooling-off period.

I issued a provisional decision for the complaint and set out why it was within our jurisdiction. Neither party objected to what I said, so I'm not going to set it out 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 was responsible under s.56 when considering whether it is likely Creation had acted fairly and reasonably towards Ms 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?*

*Ms C says she was verbally misled that the system would effectively pay for itself within the loan term. So I've taken account of what Ms C says she 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 Ms 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.*

*Ms C also signed a solar contract with details of the type of system. It also says '1 boost heatkeeper' under 'Other Information', which I understand is something put on the back of a radiator to reflect heat. It sets out the order price was £11,250 but doesn't give any details of the estimated benefits of the system.*

Ms C did, however, sign a form titled *Guarantee and Performance Estimate*. This set out the system was estimated to yield 4,292kWh. It also set out for the potential 1<sup>st</sup> year benefit:

<i>Feed in tariff</i>	£574.60
<i>Export tariff</i>	£104.80
<i>Electricity savings</i>	£305.37
<i>Total estimate year 1 benefit</i>	£984.77
<i>Total estimate 20 year benefit</i>	£19,695.40

There's a section for hot water [heating] solution which sets out using energy generated from the system to heat water estimates at saving 50p per day. It said:

<i>Potential 20 year benefit</i>	£3,640
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There's a section for space heating that said:

<i>Total estimate year 1 benefit</i>	£196
<i>Potential 20 year benefit</i>	£3,920

There's a section for thermostat control that said:

<i>Total estimate year 1 benefit</i>	£1,519.57
<i>Total estimate 20 year benefit</i>	£30,391.40

E supplied a SEM calculations form which looks like it was signed on 30 April 2015. Curiously this sets out the total SEM figure was 3,468kWh per year. I'm not sure if this was because the size of the system was going to change. Ms C wasn't totally clear why this was but thought the size of the system may have been relevant to whether the system would be considered as a business purchase. In any event, following on from this, the MCS certificate saying the system was installed on 5 May 2015 sets out the estimated generation was 4,292kWh. So it looks like the system that was installed was the same as the one on the original order form.

We asked Ms C to talk us through the forms, and to provide details of what she was led to believe by E, and why she thought the system would be self-funding.

Ms C said she was reassured by E that the system would more than pay for itself. She thought the savings would increase year on year and that by year 10 the system would have paid for itself. She calculated her total payable to the loan for a year was around £1,740 and that with a total year 1 benefit on the form of around £1,500, with year on year increases she was reassured that by year 10 the system would have paid for itself. She highlighted the form I've described above had a total estimated 20 year benefit of over £30,000 and thought E's promises stacked up.

She highlighted again E visited her several times and pressured her to enter into the agreement. She felt like she had no real chance of a cooling off period given all the visits. It's hard to determine whether E unfairly pressured Ms C to enter into the agreement and I'm conscious Ms C ultimately did have a cooling-off period. But her testimony has remained consistent.

I think Ms C's account of what she was told about the self-funding nature of the system seems plausible. It's confusing the size of the system changed back and forth. The form I've mentioned above has lots of figures and estimates to think about. Given the contract only set out Ms C was buying the system, along with a boost heatkeeper, I think it's reasonable that Ms C may have totalled the estimated savings she'd likely make. Otherwise it's not clear why

*E would have input figures for the other sections given the contract and agreement were likely signed on the same day.*

*Based on what Ms C said, I think she focussed on the last figures on the form for estimated savings when calculating the benefit she'd receive, which doesn't seem unusual. I think Ms C thought the total year 1 estimate was around £1,500 and her loan repayments were around £1,700 so she was reassured the savings would increase year on year. I think it's reasonable to see why Ms C thought the system would have paid for itself within 10 years, even though the £1,500 she referred to was only for the thermostat control section. I think Ms C also thought the £30,000 estimated 20 year benefit was for the system but it looks like this was for the thermostat control section as well. It's not clear that section was completed accurately. Moreover, if all the savings on the form were added up it would total over £57,000 of benefits which doesn't seem accurate given the size of the system Ms C bought. So I think the paperwork may have been incorrect and misleading.*

*Creation hasn't provided evidence to dispute what Ms C said happened. Yet with no prior interest Ms C left the meeting having agreed to an interest-bearing loan, with a monthly repayment of £145.43, payable for 10 years. Given her lack of prior interest and the financial burden she took on I find Ms C's account of what she was told by E, credible and persuasive. The loan is a costly long-term commitment, and I can't see why she would have seen this purchase appealing had she not been given the reassurances she's said she received from E.*

*For the solar panels to be self-funding, they'd need to produce a combined savings of over £1,700 per year. I don't think she would have achieved this benefit given the estimated yield of the system. I therefore find the statements that were likely made as to the self-funding nature of the system weren't true.*

*I think E's representative must reasonably have been aware that Ms C's system would not have produced benefits at the level required to be self-funding. While 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 Ms C's system would not produce enough benefits to cover the overall cost of the system in the timescales stated verbally to her.*

*Considering Ms C's account about what she was told; the documentation; and that Creation hasn't disputed what's been said, I think it likely E gave Ms C a false and misleading impression of the self-funding nature of the system.*

*I consider E's misleading presentation went to an important aspect of the transaction for the system, namely the benefits and savings which Ms C 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 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 C went into the transaction. Either way, I think E's assurances were seriously misleading and false, undermining the purpose of the transaction from Ms C's point of view.*

*Would the 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 Ms 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 Ms C 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.

### Fair compensation

*In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Ms C and Creation's relationship arising out of E's misleading and false assurances as to the self-funding nature of the solar panel system. Creation should repay Ms C a sum that corresponds to the outcome she could reasonably have expected as a result of E's assurances. That is, that Ms C's loan repayments should amount to no more than the financial benefits she received for the duration of the loan agreement.*

*Ms C has complained that E promised her £500 towards her first-year deficit but hasn't been able to supply further evidence. However, I don't think I need to consider that further given the findings I'm intending to make.*

*Therefore, to resolve the complaint, Creation should recalculate the agreement based on the known and assumed savings and income Ms C received (or will receive) from the 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 C received by way of FIT payments as well as through energy savings. Ms C will need to supply up to date details 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.*

*I also find Creation's refusal to fully consider the claim has caused Ms C some further inconvenience. And I propose it pays £100 compensation for the impact of that.*

*Finally, I note Ms C also mentioned claiming damages through section 75. 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 Ms C's s.75 complaint. Furthermore, this doesn't stop me from reaching a fair outcome in the circumstances.*

I can't see either party has submitted anything materially new for me to consider.

### **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 I've not received anything new 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 Ms C's complaint and direct Creation Consumer Finance Ltd to:

- Calculate the total payments Ms C has made towards the solar panel system up until the date of settlement – A
- Use Ms C's bills and FIT statements to work out the benefits she received from the start date of the loan, up until settlement of her complaint – B
- Use B to recalculate what Ms C 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 annual interest to any overpayment from the date of payment until the date of settlement\* – C
- Reimburse C to Ms C
- Use Ms C'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 or allow Ms C to continue with her current payment so the loan finishes early
- Pay Ms C £100 compensation

\* 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 C how much it's taken off. It should also give Ms C 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 C to accept or reject my decision before 23 October 2024.

Simon Wingfield

**Ombudsman**