

The complaint

Mrs D complains about Creation Consumer Finance Ltd (“Creation”)’s response to a claim she made under Section 75 (“s.75”) of the Consumer Credit Act (“CCA”) and about allegations of an unfair relationship taking into account Section 140A (“s.140”) of the CCA.

What happened

In November 2013, Mrs D purchased a solar panel system (“the system”) from a supplier, which I will refer to as “S”. Mrs D paid for the system using a fixed sum loan agreement with Creation.

In February 2020, Mrs D complained to Creation through a claims management company (“CMC”). She said that the system had been misrepresented to her by S, in that she’d been told the system would come at no cost to her, since it would be self-funding – the Feed-In Tariff (“FIT”) payments being enough to cover the loan repayments from the first year. She also said that her relationship with Creation was unfair for reasons including that Creation:

- Failed to assess Mrs D’s creditworthiness.
- Failed to act honestly fairly and professionally in Mrs D’s best interests.
- Failed to disclose payment or receipt of any commissions and inducements.
- Failed to provide a cooling off period.
- Failed to notify Mrs D of her cancellation rights.

Creation responded to Mrs D in its final response of 18 March 2020, in which it said the claim had been made too late given the provisions of the Limitation Act, so it did not uphold the complaint.

Unhappy with this, Mrs D referred the complaint to the Financial Ombudsman Service.

Creation disputed our jurisdiction to consider the complaint. I previously issued a decision explaining why we do have jurisdiction in this matter.

Our investigator didn’t recommend the complaint be upheld. She said that the sales contract provided at the time of sale clearly showed the system would not be self-funding, so it was unlikely that the alleged misrepresentation had taken place. No commission was paid in relation to Mrs D’s credit agreement. And our investigator didn’t find any reason to conclude that the relationship between Creation and Mrs D was unfair on her.

The CMC responded to say Mrs D was not in agreement with this. The CMC provided a document our investigator hadn’t seen before, which it said was provided to Mrs D at the time of sale. This said the first-year benefit from the system would be £1,500, benefits over 25 years would be £43,118, that Mrs D had chosen the “self-financing option” at a cost of £123.71 and that her contribution to this would be “ZERO Per Week / Month”.

Our investigator considered this document alongside all the other evidence, and asked Mrs D for her comments about it – which she provided by email. Our investigator felt that the significant disparity between what was on the document and what was on the contract would

not have gone unnoticed by Mrs D at the time of sale. So, our investigator was not persuaded to change her opinion.

I issued a provisional decision explaining why I was not planning to uphold this complaint. Creation responded to say that it agreed with this. Mrs D and the CMC did not respond 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.

In line with my provisional decision, I've decided not to uphold this complaint.

s.75 claim

The sale and alleged misrepresentation took place on 20 November 2013. Mrs D made her claim to Creation on 7 February 2020. This is more than six years later. Bearing in mind the provisions of the Limitation Act, Mrs D made the claim too late, and Creation would have no liability in relation to the s.75 claim. So, I do not think its response to this part of the claim was unreasonable.

s.140 Unfair relationship complaint

At the time Mrs D made her complaint the relationship between her and Creation (through the loan agreement) was ongoing. So, the provisions of the Limitation Act were not applicable, and Creation ought to have responded fully to this part of the complaint.

When considering whether representations and contractual promises by S can be considered under s.140, I've looked at the court's approach to s.140. 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 for me to consider as part of the complaint about an alleged unfair relationship those negotiations and arrangements by S for which Creation was responsible under s.56 when considering whether it is likely Creation acted fairly and reasonably towards Mrs D. 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.

Given the evidence available, I am not persuaded that S told Mrs D that the system would not cost her anything, or that the FIT payments would cover the loan repayments from the first year.

The contract, which Mrs D signed, said the first-year benefits would be:

- FIT generation tariff £126.17
- FIT export tariff £19.64
- Electricity bill savings £65.19
- Total £210.97

This is far below the loan repayments, which were £123.71 per month, or £1,484.52 per year. With this in mind, it seems unlikely that S would've provided these figures on the contract whilst telling Mrs D something completely different. I think it is likely that Mrs D would've noticed the significant discrepancy and raised this at the time, rather than many years later.

I've taken on board what Mrs D has said, particularly in relation to the further document provided, which shows a much higher benefit. It is difficult to understand why this would provide such radically different information to that shown on the contract, why it is in such a different style to the other documents provided by S at the time of sale, and why the CMC did not submit this with the initial claim and complaint. And it is hard to understand why Mrs D did not make a complaint much sooner when the reality of the system's benefits were so different to what is shown on this document.

Overall, I am not persuaded that this document means that Mrs D was misled about the benefits of the system or that a court would conclude this created an unfair relationship.

I've also thought about the other reasons given in the letter of claim as to why the relationship between Creation and Mrs D may be unfair on her, but I am not persuaded a court would conclude that an unfair relationship was created.

My understanding is that Creation carried out a creditworthiness assessment. And there is no suggestion that the loan was unaffordable at the time it was taken out.

It is unclear in what way Creation is alleged to have failed to act honestly, fairly, and professionally in accordance with Mrs D's best interests. But I have identified no reason to conclude that this allegation is justified nor that a court would conclude the relationship was unfair as a result of this.

Creation neither paid nor received any commission in relation to Mrs D's loan agreement. So, there was no commission to disclose that would've made any difference to what Mrs D did at the time of sale or that would render her relationship with Creation unfair on her.

I cannot be sure that the cooling off period and cancellation rights were made clear to Mrs D. But there is no suggestion that she would've exercised those rights at the time. So, I can't see that this would lead a court to conclude that the relationship between Creation and Mrs D was unfair on her.

Overall, I am not persuaded that a court would conclude an unfair relationship existed between Mrs D and Creation. So, I do not 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 Mrs D to accept or reject my decision before 25 October 2024.

Phillip Lai-Fang
Ombudsman