

## **The complaint**

Mr T has complained about the way Mitsubishi HC Capital UK Plc (“MHCC”) responded to claims he’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”).

Mr T has been represented in bringing his complaint but, to keep things simple, I’ll refer to Mr T throughout.

## **What happened**

In August 2013 Mr T entered into a fixed sum loan agreement with MHCC to pay for a £8,412 solar panel system (“the system”) from a supplier I’ll call “H”. The agreement was for 10 years, and Mr T was due to pay 120 instalments of £94.46. The total amount payable under the agreement was £11,835.20. Interest was £3,423.20 and there was a £500 advance payment.

In March 2023 Mr T put in a claim with MHCC. He said H cold called him and persuaded him to have a sales meeting at his home. He said H made several misrepresentations, the main one being that the system would be self-funding. He said H told him the electricity generated by the system would lead to him being paid feed in tariff (FIT) payments. He said H told him he’d make significant savings on his electricity bills. He said H told him the benefits would cover the loan payments. Mr T said he wasn’t given enough time to go through the paperwork. Mr T said the system was misrepresented and believed the statements and several other actions at the time of the sale created an unfair relationship between himself and MHCC.

MHCC responded to say it thought the complaint had been referred out of time so didn’t intend to consider it.

Mr T decided to refer his complaint to the Financial Ombudsman in May 2023.

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

- Given the section 75 (“s.75”) claim was more likely to be time barred under the Limitation Act 1980 (the “LA”), MHCC’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 T and MHCC.

Our investigator recommended MHCC recalculate the loan based on the known and assumed savings from the system over the term of the loan, so Mr T pays no more than that and he keeps the system.

MHCC didn’t agree with the assessment. In summary, it said:

- The complaint was brought more than six years after the events complained of, so outside the time limits which apply to the jurisdiction of the Financial Ombudsman.
- Mr T's allegations of an unfair relationship don't relate to any events post-dating the sale of the system in August 2013.
- The end of a credit relationship may be the starting point for limitation purposes in civil litigation, but it isn't the starting point for the six-year period under DISP 2.8.2R(2)(a), where the unfair relationship itself would not constitute an event. It is the event(s) giving rise to an unfair relationship which are the "events complained of" for the purposes of that rule.
- Mr T had not brought a complaint about MHCC's handling of his s.75 claim and it did not issue a final response letter in relation to one.
- The investigator conflates the jurisdiction rules on the Financial Ombudsman's time limits for bringing complaints under DISP 2.8.2R(2)(a) and DISP 2.8.2R(1). It considers the approach allows any complainant to bring an otherwise time-barred claim in time by complaining about the decision not to uphold the complaint.
- Without prejudice to its position on jurisdiction it considers the approach to redress should be in accordance with the court decision in *Hodgson v Creation Consumer Finance Limited* [2021] EWHC 2167 (Comm) ("Hodgson").

I issued a provisional decision setting out why the complaint was within our jurisdiction. Neither party has objected to that, so I won't 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 H 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 H to be the agent of MHCC 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 H for which MHCC was responsible under s.56 when considering whether it is likely MHCC 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 MHCC was unfair under s.140A.*

*What happened?*

*Mr T says he was verbally misled that the system would effectively pay for itself. I've taken account of what Mr T says he was told, and I've 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.

I've looked at the other documents Mr T has been able to supply from the point of sale. He's supplied a policy of insurance document for the system; a deposit registration form; an invoice; and an MCS certificate. But none of those forms set out details of the estimated benefits Mr T would likely receive from the system.

Mr T has also supplied another form that sets out the cost of the system, but it doesn't set out any of the estimated benefits Mr T would likely receive. It has a section for the system performance, but this only sets out the number of panels and the expected yield in kWh. The form doesn't set out any of the financial benefits Mr T would likely receive from the system. So I've not seen there was an easy way for Mr T to be able to compare his costs against the benefits he'd likely receive through purchasing the system.

Our investigator spoke to Mr T to ask more about the sale. He'd looked into a 'free' scheme prior to being approached by H but this hadn't progressed. He said he'd not had solar panels before, and his motivation was driven by the hard sell of the immense potential of the financial return he'd gain. He said H described it as far outweighing the outlay of the credit agreement. He said he had a large pond at home, and he was assured the system would cover the running costs. Mr T said H oversold the FIT payments and that it led him to believe he'd be making money and using free electricity. He said H reassured him he'd be able to return to it if there were any issues or faults but that it went out of business not long after the installation. Mr T said H sold the system as being a valuable asset for his home if he decided to sell the property.

Mr T said at the time both he and his wife were working with a mortgage and dependent. He said they had the usual outgoings including a repayment mortgage; car finance; utility bills; insurances; a credit card; food; fuel and clothing. Mr T has said he only agreed to the purchase because of the benefits H told him he could expect. The loan is a costly and long-term commitment. I'm mindful it would be difficult to understand why, in this particular case, Mr T would have agreed to the installation for such a high upfront cost if he wasn't going to recoup that money within the time stated.

For the solar panels to be self-funding within the time stated, they'd need to produce a combined savings and FIT income of over £1,100 per year. I've not seen anything to indicate there's a problem with the system. Based on the generation readings I've seen it looks like it's slightly overperformed. But I've also not seen anything to suggest Mr T achieved the benefits required to make the system self-funding within the time Mr T said H stated. I therefore find the representations that were likely made weren't true. Whilst there are elements of the calculations that had to be estimated, the amount of sunlight as an example, I think the salesperson ought to have known this and made it clear the system wouldn't have produced enough benefits to cover the overall cost of the fixed sum loan agreement within the times stated.

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

I consider H'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 H's assurances in this regard likely amounted to a contractual promise that the system would have the capacity to fund the cost before the end of the loan term. 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 H's assurances were

*seriously misleading and false, undermining the purpose of the transaction from Mr T's point of view.*

*Would the court be likely to make a finding of unfairness under s.140A?*

*Where MHCC is to be treated as responsible for H'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 MHCC was unfair.*

*Because of this shortfall between his costs and the actual benefits, he has had to pay more than he expected to cover the difference between his solar benefits and the cost of the system.*

*Fair compensation*

*In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Mr T and MHCC's relationship arising out of H's misleading and false assurances as to the self-funding nature of the solar panel system. MHCC should repay Mr T a sum that corresponds to the outcome he could reasonably have expected as a result of H's assurances. That is, that Mr T's loan repayments should amount to no more than the financial benefits he received for the term of the loan.*

*MHCC told us that it considers our approach to redress should be in accordance with the court's decision in Hodgson.*

*I have considered the Hodgson judgment, but this doesn't persuade me I should adopt a different approach to fair compensation. Hodgson concerned a legal claim for damages for misrepresentation, whereas I'm considering fair redress for a complaint where I consider it likely the supplier made a contractual promise regarding the self-funding nature of the solar panel system. And even if I am wrong about that I am satisfied the assurances were such that fair compensation should be based on Mr T's expectation of what he would receive. I consider Mr T has lost out, and has suffered unfairness in his relationship with MHCC, to the extent that his loan repayments to MHCC exceed the benefits from the solar panels. On that basis, I believe my determination results in fair compensation for Mr T.*

*MHCC 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.*

*Therefore, to resolve the complaint, MHCC should recalculate the agreement based on the known and assumed savings and income Mr T received from the solar panel system over the 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 MHCC.*

*Finally, I note there's also been mention of other claims. 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 any other claims raised. Furthermore, this doesn't stop me from reaching a fair outcome in the circumstances.*

*Mr T accepted the decision. I can't see we received a response from MHCC.*

## **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 materially 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 Mr T's complaint and direct Mitsubishi HC Capital UK Plc to

- Calculate the total payments Mr T has made towards the system – A
- Use Mr T's bills and FIT statements to work out the benefits he received from the start date of the loan, up until the end of the term\* – 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 payment until the date of settlement\*\* – C
- Reimburse C to Mr T

\*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 MHCC to complete the calculation I have directed it to follow in the circumstances using known and reasonably assumed benefits.

\*\*If MHCC 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 13 December 2024.

Simon Wingfield  
**Ombudsman**