

## The complaint

Mrs J has complained about the way Mitsubishi HC Capital UK Plc (“MHCC”) responded to claims she’d made in relation to an alleged unfair relationship taking into account section 140A (“s.140A”) of the Consumer Credit Act 1974 (the “CCA”).

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

## What happened

In May 2014 Mrs J entered into a fixed sum loan agreement with MHCC to pay for a £7,700 solar panel system (“the system”) from a supplier I’ll call “S”. The agreement was for 10 years, and Mrs J was due to pay 120 instalments of £86.63. She paid a £1,000 deposit. The total amount payable under the agreement was £11,395.60, which included £3,695.60 of interest.

Mrs J settled the loan early in August 2017.

In July 2023 Mrs J put in a claim with MHCC. She said S cold called her and persuaded her to have a sales meeting at her home. She said S made several misrepresentations, the main one being that the system would be self-funding. She said S told her the electricity generated by the system would lead to her being paid feed in tariff (FIT) payments. She said S told her she’d make significant savings on electricity bills and that the benefits would cover the loan payments. Mrs J 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 MHCC.

MHCC sent a final response in October 2023 saying it thought the misrepresentation claim under section 75 (“s.75”) had been brought too late. It said it wasn’t going to respond to certain allegations, and that Mrs J hadn’t supplied sufficient evidence. Mrs J decided to refer her complaint to the Financial Ombudsman in November 2023.

One of our investigators looked into things and thought MHCC’s response to the s.75 claim was broadly fair. But she also said, in summary:

- 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 Mrs J 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 Mrs J pays no more than that and she keeps the system. She also said MHCC should pay £100 compensation for the impact of not considering Mrs J’s claim under s.140A.

MHCC didn’t agree. 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.
- Mrs J's allegations of an unfair relationship don't relate to any events post-dating the sale of the system in May 2014.
- 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.
- Mrs J had not brought a complaint about MHCC's handling of her 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").
- The investigator was wrong to use an annual cost of around £800. The paperwork was clear there'd be a shortfall between the costs and benefits.

As things weren't resolved, the complaint was passed to me to decide.

MHCC sent a further response to say certain point of sale documentation would have been supplied to Mrs J that would have enabled her to compare the costs and benefits.

I issued a provisional decision setting out why I thought the complaint was within our jurisdiction to consider. I can't see we've received any responses on why that's not right so I won't set things out again here. 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 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 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 S for which MHCC was responsible under s.56 when considering whether it is likely MHCC had acted fairly and reasonably towards Mrs J.*

*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?*

*Mrs J says she was verbally misled that the system would effectively pay for itself. So I've taken account of what Mrs J 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 Mrs J to be able to understand what was required to be repaid towards the agreement.*

*I've looked at the other documentation from the point of sale Mrs J has been able to supply. The key document setting out the financial benefits she could expect set is a document titled 'Annual Savings and Benefit'. This broadly set out Mrs J could expect:*

<i>Feed in tariff</i>	<i>£429.09</i>
<i>Exported electricity</i>	<i>£71.16</i>
<i>Annual electricity savings</i>	<i>£319.88</i>
<i>Total year one returns</i>	<i>£820.13</i>

*The form also sets out the system cost was £8,000 and that there was a return of investment of 10.25%.*

*Our investigator didn't think this form went far enough to enable Mrs J to be able to easily compare her costs to the overall benefits of the system. MHCC thought the form did, and that Mrs J would have been supplied other documentation to help her make an informed choice.*

*I'm conscious the form has slightly different figures on it to the system Mrs J had installed. The form was for an £8,000 system with a yield of around 2,984kWh. Whereas Mrs J's system cost £7,700 and her MCS certificate says it should yield around 2,520kWh.*

*However, whether or not S correctly informed Mrs J, having carried out some calculations, based on what I've seen, I'm not convinced there's been any detriment caused in the particular circumstances of this case.*

*Mrs J settled her loan early and received a rebate of interest of around £1,850. So instead of paying around £11,400 for the system (when interest is included), she paid around £9,500. Mrs J showed us a meter reading from 7 November 2023 (31,441kWh). So it looks like Mrs J's system has overperformed as its annual generation is around 3,300kWh. Based on reasonably known calculations, it looks like Mrs J's system is broadly self-funding within the loan term. I think this is as a result of the over performance and reduced interest she had to pay. So even if I were to uphold the complaint and direct MHCC to recalculate the agreement to effectively make the system self-funding within the loan term, I don't think there'd be a refund due to Mrs J.*

*Therefore, in the particular circumstances of this case, as I don't think Mrs J has lost out, I'm not intending to direct MHCC to take any further action.*

*I can't see we've received any further submissions from the parties.*

### **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 can't see we've received anything new to consider I see no reason to depart from the conclusions I reached in my provisional decision.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 20 December 2024.

Simon Wingfield  
**Ombudsman**