

The complaint

Mr W has complained that Ikano Bank AB (publ) ("Ikano") rejected his claim against it under section 75 of the Consumer Credit Act 1974 in relation to his purchase of some solar panels.

Background

Mr W bought solar panels for his home in or around March 2019. The purchase was funded by a loan from Ikano, and that business is therefore liable for the acts and omissions of the installer under the relevant legislation. In this case, that relates to the installer misleading Mr W into believing that the panels would be self-funding, which they weren't.

Mr W's complaint was considered by one of our adjudicators. She thought that the benefits of the panels were mis-represented to Mr W, and that fair redress would be for the loan to be restructured to effectively make the panels self-funding. This restructure should be based on evidence of the actual performance of the panels, and a number of assumptions on future performance.

Ikano didn't agree. It argued that this case closely resembled another case which another adjudicator had not upheld, and so the decision in this case should be consistent with the decision in that one. It said Mr W had signed a "validation sheet" in which he had indicated that he understood the loan and the feed-in tariff scheme, and argued that Mr W would not have signed it if he did not understand the sales documentation.

Since no agreement was reached, the case was referred for an ombudsman's decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Ikano is familiar with all the rules, regulations and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach. So I don't consider it necessary to set all of that out in this decision.

Having carefully considered everything provided, for the same reasons as those explained by the adjudicator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mr W was not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for him.

In particular, one of the sales documents stated that Mr W would receive nearly £37,000 in total savings and income over 30 years, an average of over £1,200 a year, which would have been more than enough to cover his loan repayments if this had been an accurate annual figure, which it was not. Other evidence shows that there would actually be a significant shortfall throughout the loan period.

I don't think that Mr W's signature on the validation sheet gets Ikano off the hook, because it only indicates that Mr W *thought* he understood the sales documentation, not that he actually did understand it. Indeed, I think that Ikano's point here is misconceived – since a misrepresentation is only actionable if the misrepresentee is taken in by it, such a document could never be a defence. I further observe that nowhere on the validation sheet does it actually say that the benefits of the panels will not be enough to cover the loan payments.

The other case Ikano has referred to should have been upheld in the first place. I'm pleased to see that Ikano has subsequently realised that, and has made an offer of compensation to the complainant in that case, in line with our Service's usual approach.

So I think that Ikano didn't treat Mr W fairly and he lost out because of what Ikano did wrong. And this means that it should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr W's complaint for Ikano to put things right by recalculating the original loan based on the known and assumed savings and income to Mr W from the solar panels over the 126-month year term of the loan so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

If the calculation shows that Mr W is paying (or has paid) more than he should have, then Ikano needs to reimburse him accordingly. (Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with him by way of explanation – but I think this is unlikely.)

If the calculation shows there is a loss, then where the loan is ongoing, I require Ikano to restructure the loan. It should recalculate the loan to put Mr W in a position where the solar panel system is cost-neutral over the 126-month loan term.

Normally, by recalculating the loan this way, Mr W's monthly repayments would reduce, meaning that he would have paid more each month than he should have done, resulting in an overpayment balance. And as he would have been deprived of the monthly overpayment, I would expect a business to add simple interest at 8% a year from the date of the overpayment to the date of settlement. So I think the fairest resolution would be to let Mr W have the following options as to how he would like his overpayments to be used:

- a) the overpayments are used to reduce the outstanding balance of the loan and he continues to make his current monthly payment resulting in the loan finishing early,
- b) the overpayments are used to reduce the outstanding balance of the loan and he pays a new monthly payment until the end of the loan term,
- c) the overpayments are returned to Mr W and he continues to make his current monthly payment resulting in his loan finishing early, or
- d) the overpayments are returned to Mr W and he pays a new monthly payment until the end of the loan term.

If Mr W accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

If Mr W has settled the loan, Ikano should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with interest at 8% a year.

If Mr W has settled the loan by refinancing, he should supply evidence of the refinance to Ikano, and then Ikano must:

1. Refund the extra Mr W paid each month with the Ikano loan.
2. Add simple interest from the date of each payment until Mr W receives his refund.
3. Refund the extra Mr W paid with the refinanced loan.
4. Add simple interest from the date of each payment until Mr W receives his refund.
5. Pay Mr W the difference between the amount now owed and the amount he would have owed if the system had been self-funding.

I'm satisfied that there was sufficient information available at the time that Mr W first contacted Ikano that means the claim should have been upheld. I direct that Ikano must pay £100 compensation for the inconvenience caused.

My final decision

For the reasons I've explained, I'm upholding this complaint. Ikano Bank AB (publ) must put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 April 2022.

Richard Wood
Ombudsman