

## **The complaint**

Mr. K is unhappy with the response of Ikano Bank AB (publ) (Ikano) to a complaint made following a claim under section 75 of the Consumer Credit Act 1974 ("the CCA").

## **What happened**

In or around October 2015 Mr K was contacted by a representative of a company I'll call "S" to discuss purchasing a solar panel system. After being visited by a representative from S, Mr. K decided to purchase the solar panel system with a 3-year fixed sum loan agreement from Ikano. The solar panels were subsequently installed

In July 2019, Mr. K, via his representative, made a claim under section 75 of the CCA to Ikano. Mr. K said he had been told several things which weren't true, and this caused him to enter into the contract to buy the panels. Mr K says he was told his panels would break even after 10 years, he would receive free electricity during the day and benefit from ongoing savings and feed in tariff payments. Mr K included his handover pack, his invoice, MCS certificate and electricity bills as part of his complaint.

In its response Ikano said the paperwork made it clear what Mr K would have to pay under his finance agreement, both monthly and overall so it didn't agree that Mr K would have believed the panels would be self-funding. It said the panels were performing in line with the estimations at the time of sale and it was not upholding the complaint.

As Mr K was unhappy with this response one of our investigators looked into his case. She concluded that the finance agreement made the costs to Mr K clear, and that as he was using the energy generated by the panels, he was in effect getting free electricity. She found that Mr K's testimony about what he was told was credible, and the paperwork he had from the time was not enough make it clear that the panels would not be self-funding. Because of this she upheld the complaint and recommended that Ikano calculate the actual and likely benefits from the panels over 10 years, and refund to Mr K any amount he had paid over that plus 8 % interest from the date the loan was paid off to the date of settlement. She also recommended Ikano pay Mr K £100 compensation for the trouble and upset.

Mr K accepted the investigators view and suggested resolution, but Ikano didn't. It said there was no evidence of any mis-representation and the paperwork made the cost of the loan, and the benefits clear so Mr K should have been aware that there was going to be a shortfall between the benefits of the panels and the monthly payments. It also supplied a further document setting out the first-year benefits of the panels, which it said supported its position.

As an agreement couldn't be reached, the complaint has been passed to 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I would consider to have been good industry practice at the relevant time.

In this case the relevant law includes section 56 and section 75 of the CCA. Section 75 provides protection for consumers for goods or services bought using credit. It states:

*"If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in the respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor".*

As Mr. K paid for the solar panel system with a fixed sum loan, Ikano agrees that section 75 applies to this transaction. This means that Mr. K can claim against Ikano – the creditor – for any misrepresentation or breach of contract in the same way he could have claimed against S, the supplier. So, I've taken section 75 into account when deciding what is fair in the circumstances of this case.

Section 56 is also relevant. This is because it says that any negotiations between Mr. K and S, as the supplier, are deemed to have been conducted by S as an agent of Ikano.

If there is a dispute about what happened, I must decide on the balance of probabilities what I consider to be most likely what happened, given the evidence that is available and the wider surrounding circumstances.

#### Verbal evidence

Mr. K says he was effectively cold called by S and during a subsequent sales meeting told that the solar panel system would be entirely self-financing. I haven't seen anything to suggest that Mr. K had previously shown an interest in solar panels before he was contacted by S.

I've considered Mr K's testimony about what happened when he spoke to S. I find his testimony to be credible and persuasive. It's also hard to see why Mr K would agree to the installation of the solar panel system, paid for by a loan, which would increase his monthly outgoings, given his financial circumstances. I've also borne in mind that Mr K's representatives have said that the system is likely to take 19 years to break even. This is a substantial period of time, and there's nothing to suggest that Mr K was looking that far ahead in his plans.

Based on this, I think it is unlikely that he would've agreed to the solar panel system and a loan with Ikano unless he'd been led to believe that it would be self-funding and come at no additional cost to him. Therefore, I accept Mr K's version of events.

#### The documentation

I've gone on to consider the paperwork that has been provided to see if there was anything contained within it that made it clear that the solar panel system wouldn't be self-funding.

What I am considering is whether or not all the documentation Mr K had access to at the time of the sale would have made it evident that, despite what he says he was told, the solar

panels would not be self-funding. In order for Mr K to make an informed decision about the benefits of the panels in relation to the overall costs to him he needed to be able to compare the cost of the solar panel system to any benefit he may have received or have been promised.

I've considered the loan agreement. This is dated 30 October 2015, and sets out the amount being borrowed, the interest to be charged, total amount payable, the term of the loan and the contractual monthly loan repayments. I'm satisfied that this is clear and there is no reference to the solar panel system being self-funding.

I've also considered the sales document, which Ikano supplied in response to the investigator's opinion. This was not part of Mr K submissions, and while its signed, it's not clear if the signature is Mr K's or the sales representatives. This has a contract date of 30 October 2015 and refers to a 2-and-a-half-hour appointment on that date. It includes details of the contract price, the predicted performance and the likely first year benefits. There is nothing showing the cost of the loan, or what the monthly repayments would be once the 12 months interest free period had ended. If this document was shared with Mr K on the 30th, I'm not convinced the information it contains would have led him to question what he had been told verbally.

I've reviewed the sales handover document carefully. This has information on the cost of the goods, the expected performance and an estimation of the likely benefits each year, and an accumulative total. There is no reference to the total cost of the system, including interest, or the monthly loan repayments.

I'm also mindful that this document is dated 17 November 2015, the time of installation. I have to take account that this was not available to Mr K at the time he was making his decision to purchase the panels, but around 2 weeks later. He did not have the opportunity to compare what he was being told verbally and the estimated benefits on that document at the same time, or before committing to buy the panels. And I don't he had the opportunity to compare the true cost of the system to any benefit he might receive or had been promised.

Taking all of the above into account, I consider that the various documents provided to Mr K over a period of some two weeks were presented in such a way that it would have been difficult for him to make an informed decision without relying on what he was told by the representative of S. So, I'm persuaded it is reasonable for Mr K to have relied on what he was told by the representative when he agreed to enter the contract.

#### Has Mr K suffered a loss?

My view is that for the solar panels to be self-funding and come at no additional cost to Mr K, the monthly savings and benefits he would achieve should have been sufficient to meet his monthly loan repayments.

It is clear from the information provided that this has not been the case and there was a shortfall between his monthly loan repayments and any benefits he has received from the solar panel system.

For the reasons I've explained above, I find it likely that Mr K has suffered a loss as a result of the misrepresentation made by S. And as Ikano has equal liability for the misrepresentation made by S, I find that it is responsible for Mr K's loss.

## **Putting things right**

The role of this service is to help settle disputes between consumers and businesses providing financial services fairly and reasonably with minimum formality. In cases like this one, determining compensation isn't an exact science. My role is to arrive at fair compensation taking account of the particular circumstances.

My view of Mr K's complaint is that it isn't so much about the solar panels themselves but that he was led to believe that they would be self-funding. And based on this I don't think it would be fair or proportionate to require the removal of the solar panels from his home. Considering Mr K's comments and his individual circumstances the fair outcome here is to put Mr K in a position where the solar panel system is cost neutral over a period of 10 years, meaning that he's not disadvantaged by the misrepresentation.

So, I think Ikano should calculate the benefits Mr K has had from his system, and the likely benefits he will receive from the panels over 10 years from installation and ensure he pays no more than that. This should be calculated using Mr K's actual FIT generation and electricity bills where available.

As Mr K paid off the loan, if after this calculation is completed, it shows that Mr K has paid more than the estimated benefits over a 10 year period, Ikano should refund him the overpayment with 8% from the date of the overpayment until the date of settlement.

I'm satisfied that there was sufficient information at the time that Mr K first complained to Ikano that means his complaint should have been upheld. The fact that this didn't happen has caused him trouble and upset and consequently I'll make an award of £100 for this.

## **My final decision**

My final decision is that Mr K's complaint should be upheld. In full and final settlement of it, I require Ikano Bank AB (publ) to:

- allow Mr K to keep the solar panels,
- estimate the potential savings and income to Mr K from the panels over a 10-year period and rework it so he pays no more than this. Where possible, it should use Mr K's electricity bills and FIT statements to do this.
- add 8% simple interest\* to any overpayment made from the date the overpayment was made to the date of settlement,
- pay Mr K £100 for the trouble and upset caused.

\*If Ikano Bank AB (publ) considers that it's required by HM Revenue & Customs to take income tax from that interest, it should tell Mr K how much it's taken off. It should also give him a certificate showing this if he asks for one so he can claim the tax from HM Revenue & Customs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 21 March 2023.

Sarah Holmes  
**Ombudsman**