

## **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.

Mr W is represented in this complaint by a claims management company ("CMC").

## **Background**

Mr W bought solar panels for his home in August 2017. 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 summary, the CMC says:

- the installer misled Mr W into believing that the panels would be self-funding, which they weren't;
- Mr W was misled about the total amount he would have to pay, in that the sales contract omitted to mention the loan interest;
- the panels are under-performing.

Ikano did not accept that any misrepresentation had taken place. But it did accept that the panels were underperforming, and in its final response letter (in March 2021) it offered to carry out an inspection to find out why. That offer was not accepted at the time.

Mr W's complaint was considered by one of our adjudicators. She did not think that the benefits of the panels had been mis-represented to Mr W, or that the total repayable under the loan had been unclear.

The CMC did not accept that opinion. It argued that:

- not enough weight had been given to Mr W's account of what he had been told verbally by the salesman, and instead too much weight had been given to the sales documentation (which had led the adjudicator to disbelieve Mr W's account);
- where a person is unaware that a representation is false, the fact that they could have found out it was false by taking reasonable care is not a defence in law.<sup>1</sup>

The CMC asked for an ombudsman to review this case.

I wrote a provisional decision which read as follows.

## **What I've provisionally 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.

Having carefully considered everything provided, I am currently minded to uphold this complaint in part. I will explain why.

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<sup>1</sup> Citing *Chitty on Contracts* (34th edition), paragraph 9-051.

### Misrepresentation: self-funding

The contract for the sale of the solar panels sets out the cost and the estimated benefit of the panels very clearly, and the benefits did not begin to approach the cost.

Due to installers on completion: £.....	N/A
Finance amount (if applicable): £.....	10,790.00
Finance type:.....	120 months Ikano

<b>ESTIMATED TOTAL 1ST YEAR BENEFIT:</b> <small>The FIT and the Export tariff are paid for 20 years. They will go up in line with inflation and will be 'up-rated' every April. Your savings from using some of the electricity generated will also increase if electricity prices rise.</small>	<b>£212.03</b> <small>(Based on 50% of Electricity Bill Savings)</small>	<b>£159.12</b> <small>(Based on 25% of Electricity Bill Savings)</small>
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Immediately above the signature box, in the middle, it says in bold capital letters "Estimated total 1st year benefit," and next to that on the right are two figures showing the estimated range, of which the higher figure is £212.03. I think this figure is conspicuous; it is not buried in some fine print. To the left it says that the finance amount is £10,790, payable over 120 months, or ten years. This document was signed by Mr W immediately below those figures, and so I think that the installer's salesman did enough to bring this information to his attention.

The interest on the loan does not appear on this document, and so I think that Mr W could be forgiven for overlooking it. However, one tenth of the amount borrowed would clearly come to £1,079 each year. That is about five times the stated benefit figure for the first year. Again, I think this is clear.

For these reasons, I am not persuaded that the installer misled Mr W about the benefits and cost of the panels. It was clear that the panels would not be self-funding during the term of the loan.

### Total amount repayable

I also do not think that Mr W was misled about the total amount he had to repay towards the loan. Although the interest is not mentioned in the sales contract I have just referred to, the terms of the loan were clearly set out in the loan agreement.

Cash price: £	10790.00	
Deposit: £	0.00	
Total amount payable: £	14242.58	
Amount of Credit: £	10790.00	
Total charge for credit: £	3452.58	
Duration	120	Months

This made it clear that the total amount he had to repay was more than the cash price of the panels, since he was taking out an interest-bearing loan.

### Performance

It is not in dispute that the solar panels are not generating as much energy as was estimated at the point of sale. This might be evidence of a misrepresentation, but it could also be evidence of some defect instead (either with the panels themselves, or with how they were installed). Section 75 makes Ikano liable not only for misrepresentation, but also for breach of the implied contractual term that the panels will be of satisfactory quality.

The remedy depends on which it is – misrepresentation or breach of contract – not least because, under the Consumer Rights Act 2015, the supplier of defective goods is usually entitled to one attempt at repairing them.

So I think it was reasonable of Ikano to offer to inspect the panels (at no cost to Mr W) to find out why. That inspection has not happened. But as far as I know, this offer is still open.

I currently think it would be fair to allow Ikano and Mr W the opportunity to carry out the offered inspection, at no cost to Mr W, to find out why the panels are not performing as expected. If that is done, then I will be likely to uphold this complaint, and the result of the inspection will determine what the remedy should be.

(If Mr W does not agree to the inspection, then I am likely to decide that he has not done enough to mitigate his loss, with the result that I would be unlikely to uphold his complaint. If Ikano no longer wishes to carry out the inspection, then – subject to any representations Ikano may make on the subject – I will be likely to presume that the benefits of the panels were misrepresented, and to uphold the complaint with the appropriate redress.)

#### My provisional decision

So my provisional decision is that I may uphold this complaint. Subject to any further representations I receive from the parties ... I intend to determine this complaint in the light of the results of the inspection.

#### **Developments since my provisional decision**

The inspection was carried out, and the result was that a number of problems were discovered, which had been present since installation. The independent report identified the remedial work which would have to be done to put the solar panels into good working order, at a cost of £4,260.

Ikano has therefore agreed to pay for the remedial work and to pay Mr W compensation for the loss of benefits between the date of installation (14 November 2017) and the date the repair work is completed. It also agreed to pay a further £100 for Mr W's inconvenience. I think this offer is fair, except that I also think that interest should be paid on the compensation at the rate of 8% a year (except on the £100). So I will uphold this complaint on the ground that there was a breach of contract by the installer, and that Ikano must put this right in the manner I have outlined in this paragraph.

#### **My final decision**

So my decision is that I uphold this complaint in part. I order Ikano Bank AB (publ) to:

- Arrange for the remedial work identified in the independent report dated 9 June 2022 to be carried out at no cost to Mr W;
- Calculate the difference between (1) what Mr W has made from the solar panels from the date of installation to the date the remedial work is completed and (2) how much he would have made instead if the panels had been installed correctly in the first place, and share its calculations with the CMC so that the CMC can check them;
- Pay Mr W the difference so calculated, with simple interest on that payment at eight per cent a year from 14 November 2017 to the date of settlement; and
- Pay Mr W £100 for his inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 October 2022.

Richard Wood  
**Ombudsman**