

The complaint

Miss D has complained that Ikano Bank AB (publ) ("Ikano") rejected her claim against it under sections 56 and 75 of the Consumer Credit Act 1974 in relation to her purchase of some solar panels.

Background

Miss D bought solar panels for her home in August 2020. The purchase was funded by an 11-year loan from Ikano (one year without payments, and then ten years of monthly loan repayments). Ikano is therefore liable for the acts and omissions of the installer under the relevant legislation. Miss D says the installer misled her into believing that the panels would be self-funding, which they weren't, and that he did not tell her that interest would be charged on the loan. She also says she had several serious health conditions at the time of the sale, which had caused her to have chronic fatigue, anxiety and depression.

Ikano did not agree that the panels had been sold on the basis that they would be self-funding. It said it had not known about her poor health at the time it executed the loan agreement.

One of our adjudicators looked into what had happened. Having considered all the information and evidence provided, our adjudicator decided to uphold this complaint on the ground that the installer had failed to make it clear to Miss D that the panels would not be self-funding.

Ikano did not agree, and so the case was referred for an ombudsman's decision. I wrote a provisional decision which read as follows.

My provisional findings

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

Having done so, I am minded to uphold it, but for different reasons to those given by my colleague.

Interest

The loan agreement clearly sets out that there would be interest on the loan, but I note that Miss D signed this agreement several days after she signed the contract. So it is possible that she did not see the agreement at the time she agreed to buy the solar panels and take out the loan. For that reason, although there was a 14-day cooling-off period in which she could have withdrawn from the loan agreement, I have decided not to rely on this document for the purpose of deciding whether she was told about the interest.

However, there is also another document, titled "Validation Sheet." This was signed by Miss D on the same day as the contract, 4 August 2020. It is only two pages long and on the first page it sets out the key details of the loan, including the interest, in a section titled "Loan Details."

LOAN DETAILS

Loan Amount	£ 9700.00
Loan Term	132 months
Monthly Payments (paid by customer)	£ 106.55
Total Repayable (inc. interest)	£ 12785.12 .

So I am satisfied that Miss D was told there would be interest payable on the loan.

Misrepresentation

Having carefully considered everything provided, I do not think there is enough evidence to show that the panels were misrepresented by the salesman. That is because the sales documentation set out the cost and the estimated benefit of the panels very clearly, and the benefits did not begin to approach the cost.

As I have set out above, the Validation Sheet showed how much Miss D would have to pay each month: £106.55. That clearly comes to more than £1,200 a year.

There is a one-page document, titled "Performance Estimation." This has also been signed by Miss D. Immediately above her signature is a section headed "Estimated Year 1 Benefit." This states that the estimated benefit from the panels in the first year will fall in the range from £249.71 up to £399.54 at most. The higher figure is clearly only one third of the annual loan payments.

Estimated Year 1 Benefit

Elec Savings 3694 KW/h x 50 to 80% x 1352 p/KWh = £249.71 to 399.54
 Total Estimate Year 1 Benefit = £249.71 to 399.54

In both documents, I think these figures are conspicuous; they are not buried in some fine print. As I've said, both documents were signed by Miss D, and so I think that the installer's salesman did enough to bring this information to her attention.

Miss D told me that the salesman told her that the estimated year 1 benefit was the profit she would make from the solar panels after making the loan payments and paying her electricity bills. So she was expecting the panels to make over £2,000 a month, gross. But there is nothing in that document (or any other) to support that.

For these reasons, I am not persuaded that the installer misled Miss D 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.

(In coming to that conclusion, I have departed from our service's usual stance of saying that the cost and benefit of the solar panels should both appear in the same document. That is

because these two documents were both signed by Miss D on the same occasion, and have a total of only three pages between them.)

Vulnerability

At my request, Ikano asked the installer for their policy on dealing with vulnerable consumers, and whether their salesman made any note about whether Miss D disclosed any of her health conditions at the time, or whether he identified any himself. Ikano received no response, but it did provide me with a copy of the installer's policy from 2016. That may have been superseded by a more recent version, but I think it is unlikely to have changed much.

The installer's policy says (among other things) that if a customer is mentally or physically infirm then the presence and assistance of a trusted friend or relative should be sought. If the customer is alone, then the visit should be rearranged for a time when such a person can be present. That did not happen.

There are two possible reasons why that was not done. One is that Miss D did not mention her health problems and the salesman reasonably did not notice them, in which case he could not be faulted for not realising that this policy applied. But I don't think it is likely that the salesman did not notice at least some of Miss D's health issues. She was in a wheelchair at the time, and had been suffering from a host of illnesses. I think her vulnerability ought to have been readily apparent to him, and should at the very least have provoked some questions by the salesman to ascertain the degree of her health issues. Her answers, if not first impressions, ought to have put the salesman on notice that his employer's vulnerability policy applied and should be followed. So on balance, I think that the installer failed to follow its policy on vulnerable customers.

That is not something which Ikano would be liable for under section 75. But section 56 is broader in scope, and I think that section does assist Miss D here. Arguably, so does section 140A. If she had been assisted by a friend or relative, then that person might have advised against buying the panels and entering into the loan agreement. And if not, then that person would still have been able to corroborate Miss D's recollection of what was said at the sales meeting.

For that reason, I am currently minded to uphold this complaint. Rather than require Ikano to unwind the whole agreement, I think instead it would be fair to tell it to pay Miss D enough compensation to make the panels self-funding after all, as if a misrepresentation had been made.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Miss D's complaint for Ikano to put things right by recalculating the original loan based on the known and assumed savings and income to Miss D from the solar panels over the 11 year term of the loan so she pays no more than that, and she keeps the solar panel system, and any future benefits once the loan has ended.

If the calculation shows that Miss D is paying (or has paid) more than she should have, then Ikano needs to reimburse her accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with her by way of explanation.

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 Miss D in a position where the solar

panel system is cost-neutral over the 11 year loan term.

Normally, by recalculating the loan this way, Miss D's monthly repayments would reduce, meaning that she would have paid more each month than she should have done, resulting in an overpayment balance. And as she 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 Miss D have the following options as to how she would like her overpayments to be used:

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

If Miss D accepts my decision, she should indicate on the acceptance form which option she wishes to accept.

If Miss D has settled the loan, Ikano should pay her the difference between what she paid in total and what the loan should have been under the restructure above, with interest at 8% a year.

If Miss D has settled the loan by refinancing, she should supply evidence of the refinance to Ikano, and then Ikano must:

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

I'm satisfied that there was sufficient information available at the time that Miss D 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

My decision is that I uphold this complaint. I order Ikano Bank AB (publ) to put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 7 November 2022.

Richard Wood
Ombudsman