

Complaint

Mr and Mrs B has complained that Ikano Bank AB (publ) rejected their claim against it under Section 75 of the Consumer Credit Act 1974.

Background

Mr and Mrs B bought a solar panel system (“the system”) for their home in 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 this case, that relates to the installer misleading Mr and Mrs B into believing that the panels would be self-funding, which they weren’t.

Mr and Mrs B’s complaint was considered by one of our adjudicators. She thought that the benefits of the panels were mis-represented to Mr and Mrs B, and that fair redress would be for the loan to be restructured to make the panels cost no more than the benefit they would provide over a ten-year period. 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 saying the sales documents made it clear the system would not be self-funding, so the case was passed to an ombudsman.

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.

Mr and Mrs B say there were told that this system would be self-funding and they purchased the system on that basis. They say they were advised, that at most they’d have to contribute £50 a month towards the purchase for the first year only and the benefit would increase from then on making the system self-funding. Their testimony has been clear and consistent throughout.

I understand Ikano believes that the sales documents from the time of sale indicate that it was made clear to Mr and Mrs B that the system would not be self-funding over the term of the loan. There are several documents submitted by both Ikano and Mr and Mrs B – including a quotation order form, a variation of contract and two estimated returns document, one handwritten and one typed. They were also given a number of other documents such a document explaining how inflation could impact the costs of utilities with a significant amount of handwritten facts and figures.

I can see that originally the sales meeting was conducted in August 2017. The quotation order document sets out that Mr and Mrs B’s system will produce 3,248 kWh annually and

the first-year benefit is likely to be around £499. It also sets out the cash price of £8,995 on it.

There is also a handwritten estimated returns document which further explains that Mr and Mrs B's system could expect to produce 3,248 kWh annually, and the first-year benefit is £499 (but this was £717 with optional extras). There is a section for the installer to complete comparing the costs with the benefit, but this was not completed. This document is not dated – but Ikano believes this was likely given to Mr and Mrs B on the day of the sale as some of the figures presented on there, match those on the quotation order document. But to be clear, this document is not dated and also includes figures not on the quotation order form so I've had to bear in mind that neither Ikano nor Mr and Mrs B can say for certain if/when the document was given to the consumers.

A contract variation document was completed in early September 2017 following a technical survey. The variation document sets out a revised annual estimated benefit of 2,722.82 kWh (but 2,995 with solar edge). The maximum first year benefit was around £324.24 (£376.3 with solar edge). This document was not signed by Mr and Mrs B – a signature has only been completed by the issuer.

There is also a typed estimated returns document. This document is not signed or dated, and it doesn't contain the consumers details. It sets out that the system is expected to produce 2995 kWh annually, a maximum benefit of around £376.51 in the first year (but £576.31 with optional extras.) On this document, the section comparing the cost and benefit has been completed and notes a shortfall of £49.97 between cost and benefit. But there is a note below that says, *"the combination of all savings measures a return in investment in year 1"*.

Ikano believes the typed estimated returns document was given to Mr and Mrs B alongside the variation contract as it contains some of the same figures as the variation document. And it clearly shows a shortfall between the monthly benefit Mr and Mrs B will receive and their monthly costs. They add that the variation document and the typed estimated returns document supersedes the earlier agreement – and this clearly shows Mr and Mrs B that the benefits would not cover the costs associated with the loan as it set out a monthly shortfall of £49.97. But much like the handwritten estimated returns document, as the document isn't dated, neither Ikano nor Mr and Mrs B can say for certain if/when the document was given to the consumers.

I note the credit agreement was signed during the original sales meeting in August 2017, and this sets out that Mr and Mrs B were taking out finance of £8,995 repayable over 10 years, with monthly payments of £98.85. The total amount payable with interest was £11,873. It doesn't appear that the costs were revised following the technical survey, so the credit agreement remained unaltered.

I've thought carefully about Ikano's comments and appreciate it feels these documents made it clear that the system would not be self-funding. But I have to disagree. It looks to me like Mr and Mrs B were given a barrage of figures over several documents over at least two separate meetings. Given Mr and Mrs B's lack of experience with generation figures, I think they'd need considerable help in understanding what these figures meant. And they say they were told that the system would be self-funding with a maximum contribution of £50 a month needed in the first year following installation. This appears to be supported by the typed and undated estimated returns that suggests a shortfall of £49.97 for the first year.

I would add that, as explained by our investigator, the 20-year benefit figures on the both the estimated returns documents are significantly more than the estimated year one figures

benefit multiplied by 20 – indicating the annual benefits will increase after the first year. As Mr and Mrs B say they were told.

There seems to be no explanation as to why the agreement was varied, and why the system was estimated to produce less energy than the installer initially set out during the sale – when the credit agreement was signed and the sale agreed to. And I have to bear in mind, that the variation agreement doesn't appear to have been signed by Mr and Mrs B. So while they may have been told about the shortfall for the first year, I've seen nothing to persuade me that they were given any of the other information on that document relied on by Ikano to show the system would not be self-funding following that first year. And I also have to bear in mind that the credit agreement and the order form had already been signed and agreed to by this time.

I have considered the specific figures highlighted by Ikano, and if read in the manner set out by Ikano, they appear to suggest that the benefits provided by the system is significantly lower than the cost - therefore the system would not be self-funding. But the documents, in my opinion, are not easy to navigate, and require significant examination and explanation to enable someone to reach that conclusion.

I must have regard to the wider context in which those figures and documents were presented bearing in mind that Mr and Mrs B are not well versed in these sorts of sales or solar panels generation figures. So I've thought about the following factors:

- I've considered how that information was set out on the documents.
- The number of documents given to the consumers.
- The multiple meetings that occurred and the fact that it's not entirely clear what information was given at which meeting.
- The number of figures set out for them on each document and overall
- The fact that some of the most significant documents aren't signed by Mr and Mrs B so it's not clear if these were even discussed with the consumers or if the documents were simply given to them as part of the sales pack.
- The timeline of events, and the fact that the document setting out the shortfall appears to have been produced after the purchase and credit agreement had already been agreed to.

Overall, based on everything I've seen, it seems to me that the information given to the consumers was extremely confusing at the very least. I think the documents likely reflect the nature of the discussions Mr and Mrs B had with the installer. And I'm not satisfied that information was clear enough to enable them to understand that the benefits the system would likely produce would be less than the costs and therefore the system would not be self-funding. I therefore find Mr and Mrs N's testimony to be reliable and accept that they were verbally told the system would be self-funding after a year – as the benefits would cover the cost of the system – and they bought the system on that basis.

So, 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 and Mrs B were not given clear information to demonstrate that the solar panels would *not* be self-funding and would equate to an additional cost for them.

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

Fair compensation – what Ikano needs to do to put things right for Mr and Mrs B

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr and Mrs B's complaint for Ikano to put things right by recalculating the original loan based on the known and assumed savings and income to Mr and Mrs B from the solar panels over a 10-year period so they pay no more than that, and they keep the solar panel system, and any future benefits once the loan has ended.

In the event the calculation shows that Mr and Mrs B are paying (or have paid) more than they should have, then Ikano needs to reimburse them accordingly. Should the calculation show that the misrepresentation has not caused a financial loss, then the calculation should be shared with Mr and Mrs B by way of explanation.

If the calculation shows there is a loss, then where the loan is ongoing, I require Ikano to restructure Mr and Mrs B's loan. It should recalculate the loan to put Mr and Mrs B in a position where the solar panel system is cost neutral over a 10-year period.

Normally, by recalculating the loan this way, a consumer's monthly repayments would reduce, meaning that they would've paid more each month than they should've done resulting in an overpayment balance. And as a consumer would have been deprived of the monthly overpayment, I would expect a business to add 8% simple interest from the date of the overpayment to the date of settlement.

So, I think the fairest resolution would be to let Mr and Mrs B have the following options as to how they would like their overpayments to be used:

- A. the overpayments are used to reduce the outstanding balance of the loan and they continues to make their current monthly payment resulting in the loan finishing early,
- B. the overpayments are used to reduce the outstanding balance of the loan and they pays a new monthly payment until the end of the loan term,
- C. the overpayments are returned to Mr and Mrs B and they continue to make their current monthly payment resulting in their loan finishing early, or
- D. the overpayments are returned to Mr and Mrs B and they pay a new monthly payment until the end of the loan term.

If Mr and Mrs B accepts my decision, they should indicate on the acceptance form which option they wish to accept.

If Mr and Mrs B has settled the loan, Ikano should pay them the difference between what they paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mr and Mrs B has settled the loan by refinancing, they should supply evidence of the refinance to Ikano, and Ikano should:

1. Refund the extra Mr and Mrs B paid each month with the Ikano loan.
2. Add simple interest from the date of each payment until Mr and Mrs B receive their refund.
3. Refund the extra Mr and Mrs B paid each month with the refinanced loan.
4. Add simple interest from the date of each payment until Mr and Mrs B receives their refund.
5. Pay Mr and Mrs B the difference between the amount now owed and the amount they would've owed if the system had been self-funding

I'm satisfied that there was sufficient information available at the time that Mr and Mrs B first contacted Ikano that means the claim should have been upheld. I direct that Ikano should pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons I've explained, I'm upholding Mr and Mrs B's complaint. Ikano Bank AB (publ) should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 10 March 2023.

Asma Begum
Ombudsman