

The complaint

Mr S complains that Ikano Bank AB (publ), has rejected the claim he made under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system he says was misrepresented to him by the supplier (which I'll call "S").

Mr S is represented by a claims management company ("the CMC").

What happened

In August 2017, Mr S was contacted by S about buying a solar panel system. Following a sales meeting, Mr S decided not to proceed. In March 2018, Mr S was contacted again and agreed to a further meeting where he did agree to purchase a solar panel system with battery and smart thermostat ("the system") to be installed at his home. Mr S financed the purchase through a fixed sum loan agreement with Ikano that was repayable over ten years.

In November 2021, the CMC made a claim on Mr S's behalf under section 75 of the Act to Ikano. The CMC said that the supplier had made a number of representations about the system that had turned out not to be true, and it was these misrepresentations that induced Mr S to enter into the contract.

The CMC said the following misrepresentations had been made:

- The solar panels would pay for themselves because the combined benefit of the Feed-In Tariff payments and electricity bill savings would be more than enough to cover the monthly finance repayments.
- He would not be financially worse off.
- Using the benefits to pay off the loan early would allow Mr S to pay it off after within years.

The CMC has confirmed that Mr S was given two quotes showing the income and savings the system was expected to generate. The first (undated) showed a year 1 benefit of between £213.42 and £336.09. The second, dated 9 March 2018, shows a year 1 benefit of between £203.16 and £319.85. The CMC says the quotes do not match what Mr S was told at the time.

Mr S says his understanding following the sale was that his energy supplier would contact him to set up the FIT payments. This didn't happen, so Mr S contacted S about a year after installation. He was directed to contact his energy supplier which provided a FIT registration form. The energy supplier responded to highlight an error on the MCS certificate which needed correcting by S before his system could be registered for FIT payments. S did not do this, so Mr S arranged for the amendment to be made himself. The FIT payments were not backdated to the installation date, so Mr S missed out on those payments for electricity generated in the first year. Mr S thinks he may have ended up receiving lower FIT unit rates than if the application had been submitted soon after installation.

Ikano explained that it didn't agree the system had been misrepresented to Mr S because the sales contract showed the cost and benefit adjacent to each other just above where Mr S signed. And that there were no other reasons for the claim to be upheld.

The CMC then referred the complaint to the Financial Ombudsman Service. One of our adjudicators looked into what had happened and didn't think it should be upheld.

The CMC didn't agree with this. Amongst other things, it said that:

- It is our client's complaint that he was advised that over the loan term they would have paid for themselves, hence they would be "self-funding" – not that they would be "immediately self-funding". And that if he used the surplus profit he would receive from the Feed-in Tariff to redeem the loan he would be able to settle the finance within 7 years.
- Providing only one-year predictions of the benefits does not provide our client with sufficient evidence to make a comparison and determine that the system would not be self-funding over the loan term.
- The cost and benefit information was provided on separate documents, so was not clear and did not allow for an easy comparison that was clear and easy to read.
- It was not Mr S' responsibility to study the documents and to work out for himself that what he was being told was not true.

As an agreement couldn't be reached, the case has been passed to me for review.

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.

Relevant considerations

When considering what's 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 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 Act. Section 75 provides protection for consumers for goods or services bought using credit.

As Mr S paid for the system with a fixed sum loan agreement, Ikano agrees that section 75 applies to this transaction. This means that Mr S could claim against Ikano, the creditor, for any misrepresentation or breach of contract by the supplier in the same way he could have claimed against S. 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 S and the supplier are deemed to have been conducted by S as an agent of Ikano.

For the purpose of this decision I've used the definition of a misrepresentation as an untrue statement of fact or law made by one party (or their agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

Key documents

There are several documents that have been provided by both The CMC and Ikano. These include the credit agreement, quote, and performance estimate sheet. I have taken into account the other version of the performance estimate sheet, which showed a slightly higher estimated generation and benefits (although still a maximum of £336.09 in year 1).

There are two versions of the quote and performance estimate sheet. I think the ones signed on 9 March 2018 are the most relevant, since these show information about the system that was ultimately installed.

The credit agreement sets out:

- Cash Price £14,000
- Loan amount £13,900
- Total charge for credit £4,447.84
- Loan term 120 months
- Monthly repayments £152.91 pm
- Total payable £18,347.84

The quote is a one-page document which includes a basic description of the system, the estimated annual generation and the price excluding loan costs.

The performance estimate is a one-page document which sets out some details of the system including the annual generation, FIT unit rates and estimated benefits:

System Details						
Size of system to be installed	3.780	kwp				
No of panels to be installed	14	qty				
Panel output	270	watt				
Feed in Tariff rate	3.93	p				
Export Tariff rate	5.03	p				

To calculate the estimated annual output of the Solar PV system we use the following formula:
 System size (kWp) x Solar radiation input factor (Kk) x Shade factor (SF) = Estimated annual output (SEM figure in kWh/yr)*

*To calculate this, we take:

- The size of your system (in kWp)
- How much solar radiation the system is estimated to get (the 'solar radiation input factor' or Kk for short). We use official tables to estimate this which take into account your postcode region, the inclination (or tilt) of your roof and its orientation (which direction it faces), and
- How much shading there is on the system (the 'shade factor' or SF), such as from surrounding trees, chimneys, shadow from nearby buildings.

The results of your Solar PV system can be summarised below:

SAP Zone based on Postcode:						
Roof	Degrees from South	Pitch of Roof	Kk figure	System Size (kWp)	Shade Factor	Estimated Production (kWh)
1	0	35	892	1.89	1	1695.88
2	90	35	711	1.89	1	1343.79
3						
4						
Total Estimated SAP Production (kwh):						3029.07

Please note: The performance of the solar PV systems is impossible to predict with certainty due to the variability in the amount of solar radiation (sunlight) from location to location and from year to year. The estimate is based upon the government's Standard Estimation Method and is given as guidance only. It should not be considered as a guarantee of performance.

Estimated Year 1 Benefit

Feed in Tariff 3029.07 kW/h x 100% x 0.34 p/kWh = £ 10.29

Export Tariff 3029.07 kW/h x 50% x 5.03 p/kWh = £ 76.14

Elec Savings 3029.07 kW/h x 25% to 50% x 15.41 p/kWh = £ 116.69 (25) to £ 233.33 (50)

Total Estimate Year 1 Benefit = £ 203.16 (25) to £ 319.85 (50)

I think it is clear from this that the first-year benefit of the system was expected to total between £203.16 and £319.85 based on self-consumption rates of 25% and 50% respectively. This figure includes FIT payments and the value of electricity savings. Self-consumption rate is the proportion of the electricity generated by the system that Mr S would use himself.

I'm satisfied that the quote and estimated performance sheet formed a central part of the sales process. They were both completed by hand during the meeting and signed by Mr S. So, I think they are relevant, alongside Mr S's recollection of the sale, when considering if there have been any untrue statements of fact.

On the performance estimate sheet, I think there is a potential mistake – the FIT income most likely should be based on a unit rate of 3.40p per kWh. So, it should be over £100. However, this quote suggests that Mr S would've been told the benefits were much lower than they probably would be.

In Mr S's original claim and complaint, he said that he was told the benefits (FIT payments and electricity savings) would be enough to cover the monthly loan repayments and he would not be financially worse off. That suggests, despite what the CMC has later said, that Mr S alleges that he was told the system would be immediately self-funding – that is that the benefits would exceed the monthly loan repayments right from the start. I think the quote and estimated performance sheet make it clear that would not be the case.

They show that the system would cost £14,000.00 – a deposit of £100.00 and a balance of £13,900.00. And that the first-year benefit of the system would be up to £319.85.

Given that both documents were completed and signed during the meeting, I think it is likely that the salesperson discussed them both with Mr S. And it seems unlikely that – while talking through these two single page documents, that the salesperson would've told Mr S that the benefits would be significantly more than the documents show.

I think it is clear from the documents that the system would not be immediately self-funding in the way described in the original claim and complaint. For a ten-year loan of £14,000, the repayments would be £1,400.00 per year. This is significantly more than the highest potential benefit quoted of £319.85 even before adding the loan interest.

I don't think that the cost and benefits being shown on different documents make this any less clear. The two documents are a single page each and both are, in my opinion, clear. So, bearing in mind they were provided to Mr S and signed by him during the same meeting, and I think he would've been talked through the figures at that time.

So, I think it is unlikely that the salesperson would've misrepresented the solar panel system in the way Mr S has alleged.

Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that there were no untrue statements of fact made by the supplier that induced Mr S to enter into the contract for the system, and I have found no other reason to uphold this complaint.

My final decision

My final decision is that I do not uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 October 2022.

Phillip Lai-Fang

Ombudsman