

Complaint

Mr T has complained that Ikano Bank AB (publ) ("Ikano") rejected his claim against it under Section 75 of the Consumer Credit Act 1974.

Background

Mr T bought solar panel system ("the system") for his home in 2020. The purchase was funded by a loan from Ikano, and that business is therefore liable for the acts and omissions of the installer (P) under the relevant legislation. In this case, that relates to P's sales advisor misleading Mr T into believing that he could sell the unused energy produced by the system. But he couldn't do this as he does not have a meter fitted to enable him to do this.

Mr T's complaint was considered by one of our investigators. She thought P's sales advisor did misrepresent the benefits Mr T would get from the system by telling him he'd be able to sell the unused energy back to the national grid – and she felt Mr T bought the system on that basis. She suggested Ikano (with help from P) work out how much Mr T would receive in payments for the unused energy produced by the system if he did have a meter fitted. Alternatively, she said Ikano could pay Mr T the average payments received by consumers with the same size system and home as him.

Ikano didn't agree for the following reasons:

- Ikano felt the complaint shouldn't be upheld on Mr T's testimony alone. Ikano pointed out that P's records show that the sales advisor carried out a search to see if Mr T had a meter fitted to enable him to receive payments for the unused energy his system produced under the Smart Export Guarantee scheme (SEG) – and this had shown he didn't – so the sales advisor knew he wouldn't be eligible for such payments.
- His quote was based on savings alone and makes no mention of SEG, in line with the results of the above search.
- It added that if Mr T did sell the unused energy for SEG payments, his savings would be significantly less.

As an agreement couldn't be reached, the case was passed to an ombudsman.

In my provisional decision of 9 December 2022, I set out why I was minded to upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Ikano did not respond while Mr T agreed with my findings.

My findings

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

In my provisional decision I explained the following:

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.

I can see the sales quote produced by P doesn't mention any payments for the unused energy produced by the system and only mentions the likely savings in energy bills Mr T could achieve by installing the system. Usually, if a consumer was entitled to either SEG payments or FIT (feed in tariff) payments, I would expect the quote to set this out with an estimate of how much a consumer might likely receive. As Ikano says, the quote is silent on this, but I have to bear in mind, that Mr T would not be aware of how SEG/FIT payments are usually presented to consumers.

I understand that P's records show a search was carried out prior to the sales meeting and that its advisor knew that Mr T didn't have a meter fitted that would have been needed to apply for SEG payments. However, I haven't seen anything that suggests this was made clear to Mr T.

Mr T has sent in emails he sent to P after the installation of the system and from these, it's clear that Mr T believed he was going to receive SEG payments. He also changed energy suppliers to P's sales advisors recommended energy supplier to enable him to apply for the benefit. I don't think it's likely that Mr T would have gone through the effort of doing this, if he hadn't genuinely believed that this would enable him to apply for SEG payments. Mr T's testimony has also been clear and consistent throughout and I think his testimony is reliable evidence of what he was led to believe during the sale.

So, in this particular case, I'm not satisfied that the sales quotation document accurately reflects the full extent of the discussions P's sales adviser had with Mr T. I therefore think it's more likely P's sales adviser did tell Mr T that he'd be able to apply for SEG payments and I'm satisfied that Mr T relied on these representations and purchased the system on that basis.

So, having carefully considered everything provided, for the same reasons as those explained by the investigator, I uphold this case. In brief, that is because the evidence supports the conclusion that a misrepresentation took place and Mr T was not given clear information to demonstrate that he would not receive SEG payments for the unused energy produced by the system.

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

In the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. So, for the reasons explained above, I still think the complaint should be upheld.

Putting things right

In my provisional decision of the 9 December 2022, I also set out what I thought Ikano should do to put things right. I explained the following:

Fair compensation – what Ikano needs to do to put things right for Mr T

Mr T doesn't have a meter installed at his property and his provider (the one recommended by P), has advised him that it doesn't know if or when, one will be fitted. So, for the foreseeable future Mr T will not benefit from any SEG payments.

Determining fair compensation is not always an exact science and it is all the more difficult in a case like this where solar panels have been installed at a property and are, as far as I'm aware, in good working order.

I've considered if it's fair to unwind the credit agreement, remove the solar panels and give Mr T a refund of all the payments he's made (less any financial benefit gained from the installation of the solar panels). Ikano would have to arrange to have this done at its expense and of course the fully functional solar panels would then likely be disposed of. Although Mr T initially wanted the system to be removed, he has since indicated that, due to the time that's passed since the installation, he no longer wishes to pursue a return of the system. So, I don't think this is necessary when there is an alternative option that will put Mr T in a fair position.

Without a meter fitted, it's difficult to know what payments Mr T would have received for the unused energy produced by the system. But there is information available of the average annual payments consumers currently receive in SEG payments (see table below).

So, as our investigator suggested, I think Ikano should pay to Mr T, the average annual SEG payments received by a consumer based on the size of his system and the size of his house in line with the table set out below. I think Ikano should also compensate Mr T for average SEG payments over a 10-year period.

I've recommended 10 years for a number of reasons. Firstly, the term of Mr T's loan is 10 years. Solar panel systems also usually have a lifespan of at least 20 years, and as Mr T's loan payments should have concluded by year 10, any benefit he receives after this point, will be his alone to keep. Finally, while his supplier currently can't give any timescales of when meters will be fitted in his area, 10 years is a long time and it may be that one is fitted at some point in the future. So, I think 10 years of average SEG payments is a reasonable way to compensate Mr T.

SEG payments each year

House size	No of panels	System kWp	SEG profit (£)
1-2 bedrooms	6	2.1	£44
3 bedrooms	10	3.5	£73
4+ bedrooms	14	4.9	£102

Ikano should add 8% simple interest for the years Mr T would already have received the payments.*

Mr T should provide Ikano with details about the size of his system and home to enable Ikano to complete its redress calculation.

I'm satisfied that there was sufficient information available at the time that Mr T first contacted Ikano that means the claim should have been upheld. I intend to direct Ikano to pay £100 compensation for the trouble and upset caused.

Neither Ikano nor Mr T have made any further comments regarding this, so again I have no reason to depart from my findings. So for the reasons explained above, I uphold this complaint and require Ikano to pay redress to Mr T in line with what I set out above.

*I would add that if Ikano considers that it is required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr T 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.

My final decision

For the reasons explained, I uphold this 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 Mr T to accept or reject my decision before 9 February 2023.

Asma Begum
Ombudsman