

Complaint

Mrs W has complained that Ikano Bank AB (publ) “Ikano” rejected her claim against it under Section 75 of the Consumer Credit Act 1974.

Mrs W is represented by a claims management company (“the CMC”).

Background

Mrs W bought a solar panel system (the system) for her 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 supplier under the relevant legislation. In this case, Mrs W alleges that the supplier misled Mrs W into believing that the panels would be self-funding. Mrs W also complained about a number of problems she experienced following the installation of the system.

Mrs W’s complaint was considered by one of our adjudicators. She thought that the documents from the time of sale (which Mrs W signed) made it clear that the benefits of the system would not cover the purchase price and therefore the system would not be self-funding in the way Mrs W says she was led to believe. So, the adjudicator did not think a misrepresentation had taken place.

The CMC didn’t agree with the investigator’s view for the following reasons:

- The CMC re-iterated that Mrs W was verbally told the Feed in Tariff (FIT) payments and savings on energy bills would cover the cost of the monthly payments and that the system would be self-funding.
- The CMC says that Mrs W should not be expected to inspect the sales document relied on by our investigator to check that what she was being told wasn’t true.
- The CMC added that Mrs W’s testimony was the only direct available evidence of what happened during the sales meeting.
- The CMC questioned why Mrs W would buy solar panels if she had been told that she would receive no benefit during the term of the loan.

As the complaint couldn’t be resolved by our adjudicator, the case was passed to me.

In my provisional decision of 1 February 2023, I set out why I thought the complaint should be upheld in part. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Ikano did not respond and Mrs W replied that she accepted the findings in my provisional decision.

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:

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

Having carefully considered everything provided, currently, I intend to uphold this complaint in part. I'll explain why.

Self-funding

As part of my consideration of this case, I've looked at the sales contract and the estimated returns document. Each of these documents are only a page long and have been signed by Mrs W on the same day as the credit agreement. So I'm satisfied that she saw and agreed to these documents during the sale.

The contract for the sale of the solar panels sets out the cash price of the solar panel system which is £11,250 and that the consumer will use a 126-month loan with Ikano to finance the purchase.

Total Cost:	£ 11,250.00
Deposit:	£ 0
TOTAL DUE (due on completion of installation)	£ 11,250.00

IKANO x 126m

The consumer was also given an estimated returns document which set out the year one benefit amount the consumer can expect to receive from the system.

Total Estimate Year 1 Benefit = £ 12,984 to 395.77

These figures are set out clearly and directly above where Mrs W signed on each document. So, I think it's likely that she saw them, and these figures would have been discussed on the day of the sale.

To me it looks like the supplier made it clear that the system cost £11,250 and that Mrs W took out a 10-year loan to pay for it within its own contract as set out above. The estimated returns are also set out on the supplier's own form. So, I think that these documents are reliable evidence of the discussions Mrs W had with the supplier.

Of course, separately, the supplier also arranged for Mrs W to sign Ikano's credit agreement.

I don't think it's likely Mrs W would have agreed to buy the system without knowing the cost of the system – and similarly I think it's unlikely she signed a loan agreement without knowing the term of the loan. And her agreement shows that the loan was for 10 years with payments deferred for the first 6 months.

To me, it's apparent that to repay a loan for £11,250 over 10 years, Mrs W would be required to repay at least £1,125 annually. And of course, with interest (which was set out in the loan agreement), it would likely be significantly more than that. I also think it's clear that a maximum benefit amount of £395.77– would not be sufficient to cover the minimum annual cost of the loan.

Furthermore her credit agreement shows that her monthly payment was £151.47. I also think it's apparent that 12 monthly payments of £151.47, is far more than the maximum year one benefit of £395.77.

I have to bear in mind that it doesn't look like Mrs W was given an array of documents with facts and figures for her to wade through and inspect. The estimated returns are set out on one page and the costs are set out both on the supplier's contract which is one page and then again on the credit agreement. Each document has been signed by Mrs W. So, I think these documents are a good reflection of the discussions Mrs W had with the supplier and information she was given on the day of the sale – which means it's likely that the costs associated with the loan and the estimated benefits were made clear to Mrs W.

If Mrs W had been told the system would be self-funding, I would have expected her to have questioned how the shortfall would likely have been made up and I've seen no evidence that she did. So, I think that suggests that the documents most likely did not contradict Mrs W's understanding, at that time.

So while I've carefully considered Mrs W's testimony, I find the documents from the time of sale to be more persuasive in terms of what information she was likely given at the time of sale. Overall, on balance, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint.

Problems following installation

Problems with the fuse board

Mrs W has complained that the solar panels kept tripping power in her home, so it was switched off for 65 days while the supplier resolved the issue, but compensation wasn't offered for the period the system was switched off. Ikano has since offered a refund of £70.20 for lost generation during this period.

*The problem has now been resolved, and Ikano has offered compensation for lost generation. But I also think Ikano should offer *8% simple interest as this should have been offered when the problem was originally fixed, and Mrs W has been deprived of the benefit since that time. I understand the issue with the fuse board was fixed on 17 March 2021, so I think Ikano should pay simple interest at *8% from 17 March 2021, until the date of settlement. But I don't think it needs to do any more.*

Loss of use of the battery storage system

Mrs W also pointed out that she noticed the battery storage system was not working on 18 March 2021 but the suppliers didn't visit until 10 May 2021 to investigate and at this time explained that due to the earlier problems with the solar panels tripping the property, and the solar panels being switched off, the battery storage system had also cut off. While this was fixed, she was not compensated for the loss of use of the battery for the period she hadn't had the benefit of the battery storage system.

Ikano have now said that they will compensate Mrs W for the period that the battery wasn't functional and are of the opinion that £31.32 reflects the maximum potential benefit she could have expected to receive. Ikano calculated this using the maximum estimated electricity savings in year one of £211.86, which gives a daily benefit of 58p, and 54 days period between 18 March 2021 and 10 May 2021.

However, I think it's clear that the battery was also unlikely to have been working while the solar panel system was also switched off, given that this is the reason it cut off. So I think Ikano should work out the loss of use from when the solar panels were switched off rather than when Mrs W noticed the problem. I understand this was on the 11 January 2021.

*So while I think the method used by Ikano to calculate the maximum potential benefit she could have achieved is fair, I think it should work this out from 11 January 2021, until 10 May 2021. It should also add *8% simple interest on to this compensation as it should have been offered at the time.*

Water damage to internal walls

Mrs W has complained that the roof was damaged by the solar panels and while the supplier fixed the damage to the roof, it did not rectify that internal water damage. Mrs W says she had to rectify the internal water damage herself by painting the internal water damaged areas. Mrs W hasn't set out any costs she incurred or submitted any invoices/bills. But Ikano has now offered £150 compensation to cover any potential costs and the inconvenience she has suffered in having to rectify these issues herself.

While I am also satisfied that Mrs W did suffer the inconvenience and some costs associated with the internal water damage – I think Ikano's offer of £150 compensation is fair and I don't think it needs to do any more about this issue.

Removal and reinstallation of the system

Finally, Mr W complained that she asked the supplier to remove, store and reinstall some panels during an extension build. While the supplier did do this, she expected this work to be carried out for free but remained unhappy as she was charged for this.

I can't see any evidence that the supplier agreed to do this free of charge. And bearing in mind that there is usually a charge for this, I don't think the supplier did anything wrong here. While I appreciate Mrs W might have felt disappointed that there was a charge, I don't think Ikano needs to do anything about this issue.

Putting this right

- Refund £70.20 for lost generation for the period the solar panels were switched off as set out above. *8% simple interest should be paid from 17 March 2021, until the date of settlement.*
- Compensate Mrs W for loss of use of the battery for the period it was likely switched off from 11 January 2021 until 10 May 2021 at a daily rate of 58p per day. *8% simple interest should be paid from 10 May 2021, until the date of settlement.*
- Pay £150 compensation to cover any potential costs and the inconvenience Mrs W suffered in rectifying the water damage*

**If Ikano considers that it is required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs W how much it's taken off. It should also give her a certificate showing this, if she asks for one, so she can claim the tax from HM Revenue & Customs.*

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. As I've set out above, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold Mrs W's complaint that the system was sold on the basis that it was self-funding. So I don't think Ikano was unfair for declining this aspect of her claim.

However, for the reasons set out above, I think there were some post installation issues that weren't fully resolved at the time. So, I uphold this complaint in part and Ikano should put things right as I've set out below.

Putting this right

- Refund £70.20 for lost generation for the period the solar panels were switched off as set out above. *8% simple interest should be paid on this amount from 17 March 2021, until the date of settlement.
- Compensate Mrs W for loss of use of the battery for the period it was likely switched off from 11 January 2021 until 10 May 2021 at a daily rate of 58p per day. *8% simple interest should be paid on this amount from 10 May 2021, until the date of settlement.
- Pay £150 compensation to cover any potential costs and the inconvenience Mrs W suffered in rectifying the water damage

*If Ikano considers that it is required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs W how much it's taken off. It should also give her a certificate showing this, if she asks for one, so she can claim the tax from HM Revenue & Customs.

My final decision

For the reasons explained, I uphold this complaint in part. 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 W to accept or reject my decision before 24 March 2023.

Asma Begum
Ombudsman