

The complaint

Mrs U has complained about the way Ikano Bank AB (publ) ("Ikano") responded to claims she'd made under section 75 ("s.75") of the Consumer Credit Act 1974 ("the CCA"), and an alleged unfair relationship taking into account section 140A ("s.140A") of the CCA.

What happened

On 7 May 2019 Mrs U entered into a fixed sum loan agreement with Ikano to pay for a solar panel system ("the system") from a supplier I'll call "P". The loan was for £11,600, the total amount payable under the agreement was £15,311.80. Mrs U was due to pay back the agreement with 119 monthly repayments of £127.61 followed by a single payment of £126.21.

Mrs U put in a claim with Ikano explaining she thought the system was mis-sold. In summary, she said that P:

- Told her that the system would be self-funding.
- Had deliberately misled her at the point of sale as the system has not been self-funding.
- Ikano was responsible for the misleading statements made by P.

Ultimately, Mrs U said the system was misrepresented and believed the statements and several other actions at the time of the sale created an unfair relationship between herself and Ikano.

Ikano sent a final response letter and said the documentation provided didn't show that the system had been misrepresented. Unhappy with that response Mrs U referred her complaint to our service.

Mrs U's complaint was considered by an Investigator. In summary they thought that documentation from the time of the sale showed the estimated first year benefit was likely to be much less than what would be required to cover the credit agreement repayments. Consequently, they saw insufficient evidence to think that the system had been misrepresented to Mrs U.

Mrs U was disappointed with that assessment and told us that the lending had also been unaffordable. Our investigator didn't recommend that complaint be upheld. Mrs U didn't agree. As things weren't resolved, the complaint has been passed to me to decide.

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.

I've read and considered the whole file, but I'll confine my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right

outcome in the wider context. My remit is to take an overview and decide what's fair "in the round".

Merits

The unfair relationship under s.140A complaint

When considering whether representations and contractual promises by P can be considered under s.140A I've looked at the court's approach to s.140A.

In *Scotland & Reast v British Credit Trust* [2014] EWCA Civ 790 the Court of Appeal said a court must consider the whole relationship between the creditor and the debtor arising out of the credit agreement and whether it is unfair, including having regard to anything done (or not done) by or on behalf of the creditor before the making of the agreement. A misrepresentation by the creditor or a false or misleading presentation are relevant and important aspects of a transaction.

Section 56 ("s.56") of the CCA has the effect of deeming P to be the agent of Ikano in any antecedent negotiations.

Taking this into account, I consider it would be fair and reasonable in all the circumstances for me to consider as part of the complaint about an alleged unfair relationship those negotiations and arrangements by P for which Ikano were responsible under s.56 when considering whether it is likely Ikano had acted fairly and reasonably towards Mrs U.

But in doing so, I should take into account all the circumstances and consider whether a court would likely find the relationship with Ikano was unfair under s.140A.

Given my above conclusions and bearing in mind the purpose of my decision is to provide a fair outcome quickly with minimal formality, and that I can consider the alleged misrepresentations under the unfair relationship complaint, I don't think I need to provide a detailed analysis of Mrs U's s.75 complaint. Furthermore, this doesn't stop me from reaching a fair outcome in the circumstances.

What happened?

Mrs U says she was verbally misled the system would effectively pay for itself. I've taken account of what Mrs U says she was told. I've also reviewed the documentation that I've been supplied.

The fixed sum loan agreement signed by Mrs U and dated 7 May 2019 sets out the amount being borrowed; the interest charged; the total amount payable; the term; and the contractual monthly loan repayments. I think this was set out clearly enough for Mrs U to be able to understand what was required to be repaid towards the agreement.

I'm also mindful that the order form signed by Mrs U and dated 7 May 2019, contained a section which described the estimated annual output and likely benefits. This suggested the estimated year one benefits could be £677.43. This information is prominently displayed and is on the same page that was signed by Mrs U.

There is a subsequent one page document which is signed by Mrs U and dated 8 May 2019. This suggests the year one benefit could fall between £590.62 and £722.41. Mrs U has signed this document directly underneath this information.

I think the above mentioned information ought to have shown Mrs U the savings wouldn't have covered the annual loan repayments cost which was around £1,531.32. I would have expected Mrs U to have queried the shortfall if she'd been told the system would be self-funding.

I'm not pretending this is straightforward, but it seems more likely that it would have been straight-forward enough for Mrs U to have seen the system wouldn't be self-funding, based on the evidence she had at the time and which she signed at the time of the sale.

Overall, while I've carefully considered what Mrs U says she was told, given what I've set out above, I'm not persuaded there's sufficient evidence Mrs U was misled the system would be self-funding. Therefore, I don't have the grounds to say that Ikano misrepresented the system to Mrs U or are liable for an unfair relationship in this matter. And I've seen insufficient evidence to say that Ikano's decision to decline the claim was unfair.

Affordability

Ikano will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

Mrs U's complaint is that the lending was unaffordable.

Ikano has explained that it carried out a credit check using a credit agency and asked for financial information of Mrs U at the time of the lending decision to determine the amount of credit it was able to offer. It's possible that these checks could have been more searching. But even had they been I do not think that Ikano would have seen anything that made them think the lending was unreasonable. I'll explain why I say that.

I have noted the credit report that Mrs U has provided. It shows insufficient evidence of adverse information on it that would have led Ikano to think that Mrs U was not managing her existing credit at the time of the credit agreement, such as to preclude any further lending. So, I don't think better enquiries would have caused Ikano to think the credit they provided was unaffordable.

I've noted the bank statements that Mrs U has provided. These show that Mrs U's income was not modest in nature and, in any event, sufficient, as they show an account being well managed with no recourse to emergency funding.

Based on the submissions that have been made to us in this case, I'm not persuaded that fuller enquiries into Mrs U's circumstances would have led Ikano to conclude it should have avoided offering her the credit.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs U to accept or reject my decision before 6 February 2025.

Douglas Sayers
Ombudsman