

The complaint

Mr W complains that Ikano Bank AB (publ) declined his claim under Sections 75 and 140 of the Consumer Credit Act 1974.

What happened

In 2020, Mr W purchased a solar panel with battery and smart thermostat system (“the system”) for his home from a supplier. He paid for this using a fixed sum loan agreement with Ikano. At the time, he was retired and on a limited income. He says he purchased the system on the understanding that after one year he would have reduced outgoings overall, because the savings from having the system would exceed the loan repayments he would be making. He says this hasn’t happened.

In 2022, a claims management company (“the CMC”) made a claim to Ikano under sections 75 and 140 of the Act on Mr W’s behalf. It said that the supplier had misrepresented the ability of the system to pay for itself. And if Mr W had been aware that it would not do so after the first year, he would not have purchased it.

Ikano declined the claim. It did not accept that the system had been misrepresented by the supplier. It said Mr W had signed the sales contract which included clear information about the benefits of the system, which made clear it would not be pay for itself in the way Mr W says he was told.

Unhappy with this, Mr W made a complaint. Ikano didn’t change its position, so Mr W referred the complaint to the Financial Ombudsman Service.

Our investigator recommended the complaint be upheld. She noted that the sales contract was signed over two weeks after Mr W had agreed to the purchase. So, she was not persuaded that the sales contract reflected what Mr W had been told prior to agreeing to the purchase.

Ikano didn’t agree. It noted that the sale had been registered and validated by an industry body and provided evidence from the industry body which suggested the contract was signed on the same day as the loan agreement.

Because the complaint has not been resolved, I’ve been asked to make a decision.

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.

Section 75 means Ikano can be held liable for any misrepresentation or breach of contract by the supplier. And section 140 allows a court to consider whether Ikano’s relationship with Mr W is unfair on him, taking into account the supplier’s actions when selling the system.

I have decided to uphold this complaint.

Mr W's recollection of what he was told, and what his expectations were after the sale have been consistent. He had a problem with the battery, which it took him some time to resolve. But once this was sorted, he appears to have made his claim regarding the alleged misrepresentation within a reasonable time. By which I mean he waited long enough to realise the system wasn't delivering the expected savings, then took action. This is in line with what I would expect someone to do in this situation rather than, for example, not doing anything until many years after they ought to have realised there was a problem.

Looking at the estimated benefits shown in the contract Mr W signed, I am not persuaded that these clearly contradict what Mr W says he was told. They show estimated first year savings which are less than the annual loan repayments. That indicates the system would not cover the loan repayments in the first year, so Mr W's outgoings would increase in that time due to the loan repayments. But that is in line with what he expected – that it would be at least a year before his outgoings would reduce.

It then has an estimate for the total savings over 30 years. This far exceeds the total Mr W had agreed to pay under the loan agreement. That suggests that in time the system would pay for itself but does not confirm when. So, at that point, Mr W would still have been reliant on what he had been told.

Ikano has provided a table showing an annual breakdown of the estimated benefits over 30 years. It says Mr W was sent this via email. But Mr W says he didn't receive or see this. And no evidence has been provided showing if or when this was sent to him.

Overall, in this particular case, I do not think that there is sufficient evidence to counteract Mr W's recollection of what he was told. And I find his recollection to be plausible, persuasive and in line with the other available evidence. So, I think it is likely that the system was misrepresented to him and that Ikano should not have rejected his claim.

As such, I have decided to uphold this complaint.

Putting things right

It is not easy to put things right in a case such as this. The usual remedy is not proportionate, since it would involve excessive cost to Ikano and excessive disruption to Mr W. And I don't think it would be appropriate to make the misrepresentation true when it would be very difficult to do so. So, I have decided on what I think is a fair and reasonable and proportionate way to put things right, which ensures the system will pay for itself over a reasonable period of time.

Ikano should recalculate the original loan based on the known and assumed savings and income to Mr W from the solar panels over a ten-year period, so he pays no more than that, and he keeps the solar panel system, and any future benefits once the loan has ended.

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

If the calculation shows there is a loss, then where the loan is ongoing, I require Ikano to restructure Mr W's loan. It should recalculate the loan to put Mr W in a position where the solar panel system is cost neutral over a ten-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, Mr W should have the following options as to how he would like his overpayments to be used:

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

If Mr W accepts my decision, he should indicate on the acceptance form which option he wishes to accept.

If Mr W has settled the loan, Ikano should pay him the difference between what he paid in total and what the loan should have been under the restructure above, with 8% interest.

If Mr W has settled the loan by refinancing, he should supply evidence of the refinance to Ikano, and Ikano should:

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

I'm satisfied that there was sufficient information available at the time that Mr W first contacted Ikano that means the claim should have been upheld. I direct that Ikano should pay £100 compensation in recognition of the distress and inconvenience caused.

My final decision

For the reasons I've explained, I uphold this complaint. Ikano Bank AB (publ) should put things right in the way set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 January 2024.

Phillip Lai-Fang
Ombudsman