

## **The complaint**

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

Mrs D has been represented in bringing her complaint but, to keep things simple, I'll refer to Mrs D throughout.

## **What happened**

In July 2020 Mrs D entered into a fixed sum loan agreement with Ikano to pay for a £12,600 solar panel system ("the system") from a supplier I'll call "S". The total amount payable under the agreement was £18,102.65 and it was due to be paid back with 120 monthly repayments of around £150.

In December 2021 Mrs D sent a letter of claim to Ikano explaining she thought the system was mis-sold. She said S told her she'd effectively be paid for the electricity the system generated through the government's Feed in Tariff (FIT) or Smart Export Guarantee (SEG) payments and that she'd have reduced energy bills. She said S told her she'd receive a guaranteed income for 20 years; she'd earn up to 10% annually tax free and that the panels were maintenance free with at least a 25-year life expectancy. She said S sold the system as being self-funding within the loan term and it would increase the value of her property. She 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 responded to the claim and subsequent complaint. It said the sales contract was clear and Mrs D would have been able to compare the costs to the estimated benefits. It said it complied with all laws and that no commission was paid. It said no evidence had been submitted to show it didn't carry out sufficient affordability checks. It said Mrs D had the right to withdraw from the agreement. Overall, it didn't uphold the claim, or subsequent complaint.

Mrs D decided to refer her complaint to the Financial Ombudsman.

One of our investigators looked into things and didn't ultimately conclude Ikano needed to take any action. She didn't think there was sufficient evidence to show S told Mrs D the system would be self-funding within the loan term or that S pressured Mrs D during the sales meeting. She didn't think any commission had been paid and didn't think Mrs D had supplied sufficient evidence to show the agreement was unaffordable.

Mrs D didn't agree. She said S showed her a spreadsheet indicating the system would pay for itself in less than 10 years. She said she wasn't informed of the possibility of birds nesting under the panels which could damage the roof and she was misinformed that FIT didn't exist. She also said the system doesn't generate much on cloudy days and that she couldn't run her house in the evening from the battery for the system. She also said she wasn't advised that the system was certified by a company that limited her to who she could export electricity to.

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.

Where Ikano exercises its rights and duties as a creditor under a credit agreement it's carrying out a regulated activity within the scope of our compulsory jurisdiction to consider. Mrs D has complained Ikano unfairly declined her claims and that it participated in an alleged unfair relationship. Mrs D bought the system using a fixed sum loan agreement. I'm satisfied we can consider complaints such as Mrs D's relating to these sorts of regulated consumer credit agreements.

Mrs D has referred to the alleged unfair relationship when setting out her complaint. And she's alleged breach of contract and misrepresentation. Section 75 ("s.75") of the CCA makes Ikano responsible for a breach of contract or misrepresentation by S under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

Moreover, when considering whether representations and contractual promises by S 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 S 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 S for which Ikano was responsible under s.56 when considering whether it is likely Ikano had acted fairly and reasonably towards Mrs D.

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.

### ***What happened?***

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

The fixed sum loan agreement 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 D to be able to understand what was required to be repaid towards the agreement. But it doesn't set out any of the estimated benefits of the system.

Ikano highlighted a document called 'Your Personal Solar Quotation'. The quote is a detailed document that sets out the estimated output of the system; the annual returns and savings;

and the expected return on investment. Ikano indicates this formed a central part of the sales process and that the salesperson would have discussed it in detail with Mrs D prior to her agreeing to enter into the contract. Given the form is signed in various places by Mrs D, I think it likely S went through it with her during the meeting.

The quote sets out the electricity bill savings Mrs D could expect to make. It said the system could be expected to generate around £880 of electricity and that with 50% self-consumption there was an allowance for personal usage of around £440. Taking into account expected rises in fuel inflation it said Mrs D could expect to save on average around £1,200 per year over 25 years.

There's a section titled 'Putting it all together' that summarises the income and savings and when taking into account any optional extras chosen by Mrs D the combined savings for year one is shown as £802.85 (which results in a monthly benefit of around £66). It also summarises the 25-year electricity savings; savings from optional extras; cost of the system; and estimated profit. And I can see it say there's an estimated 11-year payback time. But this section applies if the system is bought outright. It doesn't include details of the interest Mrs D was required to pay under the loan agreement.

There is a 'Putting it all together' table that shows the figures I've just described and how they change over 25 years. This table shows the accumulated grand total over 25 years. The totals in the first 10 years when the loan is active are shown in red, and for the following 15 years they are shown in green. Given I've found the credit agreement was clear enough for Mrs D to have seen how much was required to be paid, and over how long, if the loan ran to term, I think Mrs D would have been able to see from the quote when the system was estimated to have produced enough benefit to have covered the cost of the system and the associated finance agreement. Mrs D would have seen that if the loan ran to term, she would have been required to pay around £18,100, and that by comparing to the table I've mentioned above, it wouldn't have been until around year 14 that the system would have likely produced enough benefit to have covered the cost of it.

There is another section titled 'Repayments' with a table showing repayments towards credit agreements. The table shows payments of around £150, which matches the loan agreement. This table shows that for the 10-year term of the loan the average monthly repayment difference was negative. It showed for the first year the average difference was around -£84 and for the 10<sup>th</sup> year it was around -£28. Mrs D was required to sign under this section to show she understood. So I think she ought to have seen that, based on the figures presented, the system wouldn't have been self-funding within the loan term. If S had sold the system in that way, I'd have expected her to query it straight away.

I've also thought about what Mrs D has said about the export payments. I think the FIT scheme was closed to new applicants before Mrs D bought the system. And I think Mrs D is able to claim through the replacement scheme, SEG. From what I've seen, her system was certified by a recognised accredited certification scheme. And I can't see the quote Mrs D signed set out details of what she would receive from SEG (or FIT), so I don't think S promised something she was unable to receive through the scheme, or indeed through FIT.

I've also thought about the other points Mrs D raised in her original claim. I don't think commission was paid. I've not seen enough to show S misrepresented the system. The system wasn't installed for over two weeks after Mrs D signed the contract and agreement. I understand she had rights to cancel or withdraw if she wasn't happy with anything. And Mrs D hasn't supplied any supporting evidence relating to the affordability of the agreement. Taking all that into account I don't find I have the grounds to make any directions in relation to her other complaint points.

Overall and on balance, while I'm sorry to hear Mrs D is unhappy, I don't think I've seen enough to safely conclude that Ikano should take any action for misrepresentation, breach of contract, or in relation to an unfair relationship.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 27 December 2024.

Simon Wingfield  
**Ombudsman**