

The complaint

Ms E complains that Ikano Bank AB (publ) ("Ikano"), has rejected the claim she made under section 75 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system ("the system") she says were misrepresented to her by the supplier.

What happened

In or around November 2019, Ms E was contacted by a representative of a company I'll call "P" to talk about purchasing a solar panel system ("the system") to be installed at her home. After being visited by a representative of P, Ms E decided to purchase the system and finance it through a 10-year fixed sum loan agreement with Ikano. The system was subsequently installed.

Ms E made a claim directly to Ikano under section 75 of the Act. Ms E was unhappy with the system for a number of reasons and wanted to return the system and get a refund of everything she'd paid. She was unhappy for the following reasons.

- Ms E said she was mis-led regarding the benefits she would receive from the system. She was led to believe that she would receive around £500 annually in benefit from the power generated by the system, but this hasn't materialized.
- She doesn't believe the system was working as it was designed to and it was faulty, and she received no benefit at all from installation until January 2022.
- She is deeply unhappy with the service provided by the supplier and has been pushed between the supplier and the energy provider – with no one taking responsibility for the problems she's had with the system for a number of years. It wasn't until January 2022, when the system issues were actually resolved.
- Shortly after this, one of the main benefits quoted by P (grid trading) was withdrawn by the energy provider Ms E was with.

Ikano initially didn't agree the system had been misrepresented to Ms E or that there were any other reasons for the claim to be upheld. The fault with the system has been rectified and the system was now in working order. Ikano did subsequently offer to compensate Ms E for the period the system wasn't switched on.

One of our investigators looked into what had happened. Having considered all the information and evidence provided, our investigator felt the complaint should be upheld. She felt the benefits P had quoted hadn't materialised, and neither P nor Ikano could explain how they'd been formulated. So, as she couldn't ascertain whether the estimates had been reasonably formulated, she accepted Ms E was likely mis-led. She felt Ikano should compensate Ms E for her losses. She recommended Ikano offer Ms E the estimated benefit in the sales document for the full duration of the loan.

Ikano didn't agree for the following reasons:

- The fault with the system (a switch being turned off) had now been rectified. The system had always been generating as it should, but Ms E couldn't use the electricity or trade with it because the switch had been turned off (or hadn't been turned on).

- The benefits quoted at the time of sale were reasonably estimated. The grid trading credits were not estimated by P, but rather the energy provider directly through a portal service it ran. P could not be held responsible if the energy provider hadn't estimated the benefit correctly.
- The energy provider entering administration and no longer providing the benefit was not something P could have foreseen at the time of sale and therefore not something P should be held responsible for. But at the time of sale, it was a legitimate estimate that it believed Ms E could and should have benefited from.
- It remained of the view, that offering to compensate Ms E for her losses for the period the system wasn't correctly switched on was a fair way to resolve the complaint.

As an agreement couldn't be reached, the case was passed to me for review. In my provisional decision of 17 November 2023, I set out why I was minded to upholding the complaint in part. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Ikano didn't add any further comments. Ms E expressed her disappointment with my findings but did agree to settle the complaint in line with my findings.

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.

In my provisional decision I explained the following:

Relevant considerations

When considering what's fair and reasonable, I'm required to take into account; relevant law and regulations, relevant regulatory rules, guidance and standards and codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

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 Ms E paid for the system with a fixed sum loan agreement, Ikano agrees that section 75 applies to this transaction. This means that Ms E could claim against Ikano, the creditor, for any misrepresentation or breach of contract by P in the same way she could have claimed against P, 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 Ms E and P, as the supplier, are deemed to have been conducted by P 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 his agent) to a second party which induces that second party to enter the contract, thereby causing them loss.

What happened?

If there is a dispute about what happened, I must decide on the balance of probabilities - what I think most likely happened, given the evidence that is available and the wider surrounding circumstances.

As explained above, Ms E bought a solar panel system, which was installed in November 2019. Ms E used a 10-year loan with Ikano to fund the purchase of the system.

Ms E says she raised concerns in 2020 with both P and her energy provider that she didn't seem to be getting any benefit from the system and says neither party assisted her with resolving the issues.

Ms E subsequently contacted Ikano seeking to unwind the agreement, return the goods and get a refund of everything she'd paid. She explained she'd been making the monthly payments under the loan agreement for a number of years but hadn't received any benefit whatsoever in return.

In January 2022, P inspected the system and noted a switch had been turned off. So, while the system had been generating, Ms E hadn't been able to use any of the energy generated nor trade with it to get any benefits from the energy provider. Ikano and P said the system was generating as it was meant to be and was in working order.

The energy provider also replied explaining the same – and this is why she hadn't received any credits from the provider. Ms E was also subsequently told that her energy provider had entered administration and it no longer provided this benefit.

Ms E says the system and switch is in the loft which she couldn't access. And she'd not received any benefit from the system since installation.

The system benefits being misrepresented to Ms E

I understand Ms E appears to have a sales quote from October 2019 from a different supplier which I'll call R. But Ikano says this wasn't the system Ms E bought or it financed so the information it provided in relation to the sale isn't relevant. Ikano is only responsible for the misrepresentation and/or breach of contract of the supplier that it financed the loan for. So, I've only considered the information provided by P in this complaint.

P's sales contract from the time of sale sets out the benefit Ms E could expect from the system.

Estimated Year 1 Solar Returns (estimates shown are factored down by a further 5% for quicker validation purposes)					
Estimated Solar Generation	2494	kWh	-5%	=	2375
Social Energy					
Energy Savings (-5%)	2375	kWh	x 25% to 50%	0.142	p = £84.32 £168.63
SE Grid Trade			SE Benefit as per quote tool		= £264.39 (year 1)
Totals (Pick One)					
SE <input checked="" type="checkbox"/>	Social Energy Total + Additional				£490.70 to £575.02

As set out above. This shows Ms E is expected to achieve energy savings between £84.32 and £168.63 and SE Grid Trade credits of £264.39 annually. In total, her annual benefit was expected to be between £490.70 and £575.02 (including an additional gas extra).

These amounts are broadly in line with what Ms E says she recalls from the sale, that she'd receive around £500 in benefit annually.

In order for me to uphold this complaint, I'd have to be satisfied that P gave Ms E estimates that it knew were incorrect, inaccurate or unreasonably formulated at the time of sale. The fact that the estimates might not have materialised isn't sufficient to demonstrate that P has failed in its duty of care towards Ms E. These were estimates not guarantees.

The validation sheet which formed part of the contract explicitly says;

"The performance of renewable energy systems is impossible to predict with certainty due to the variables that affect performance"

I understand Ms E has shown the credits received from her energy provider for grid trading has been significantly less than what was quoted since Jan 2022. As explained above, she didn't receive any credits prior to this as the system had an AC switch that hadn't been turned on which would have enabled the energy provider to calculate her benefits. Ms E felt that this therefore amounts to a misrepresentation. She bought the system on the basis that it would provide her with the level of benefit quoted in the contract, and this hadn't materialised.

However, Ikano has explained that the grid trading credit element of the quote was not formulated by P – but by the energy provider directly via a portal run by the energy provider. As can be seen on the contract – the quote says "SE benefit as per quote tool.". If the benefit amount quoted by the provider was incorrectly estimated, or overestimated by the provider, that's not something P can be held responsible for unless it knew or had reason to believe that the amounts quoted were unlikely to be achieved but it continued to pass that information on in any event. And I've seen no evidence that this is the case here.

I've seen nothing to suggest that P did anything wrong when it formulated the contract. I accept these estimated benefits haven't materialised, but as explained above, that isn't sufficient for me to uphold this complaint. I'd have to be persuaded that P gave Ms E estimates incorrectly or knowing they wouldn't materialise.

As Ms E's system's AC switch has been switched off (or never turned on), she hasn't used the energy produced by the system, so her bills haven't reduced in line with the contract. But this was due to the switch being off, not because the benefits have been incorrectly quoted at the time of sale. From what I know about solar panels, the savings estimates do not appear to be at an unreasonable level that persuades me that they were vastly incorrect in the absence of any evidence to the contrary. And as explained above, the benefit for grid trading was formulated by the provider not P – so if that was unreasonably formulated, that doesn't mean P did anything wrong that Ikano needs to put right.

I understand that grid trading benefit has now been withdrawn by the provider since it entered administration. P can only provide Ms E with estimates based on the information it has available at the time of sale – and it must do so by exercising reasonable care and skill. But it cannot be responsible for things that might happen in the future outside of its control such as a benefit being withdrawn or a provider going into administration, when that was not reasonably foreseeable at the time of sale.

I appreciate that Ms E has suffered losses due to the grid trading benefit not materialising and subsequently being withdrawn. I fully appreciate how disappointing that must be. But this doesn't mean P did anything wrong in relation to this at the time of sale that would enable me to uphold Ms E's complaint on that basis.

In terms of her savings estimate, as explained above, I've seen nothing to suggest that these haven't been reasonably formulated. Ikano says her system is and has always worked as it was designed to, but because of the AC switch issue, Ms E simply hasn't benefitted from it. It is now working as it was designed to. As the system is now generating power, and Ms E is able to use some of this, it means she'll have to buy less electricity from her current energy provider – and this means she will make some savings on her bills going forward.

But overall, I don't think there's enough here for me to make a reasonable finding that the estimates made by P at the time of sale amount to a misrepresentation.

The system being faulty

Ms E's system was installed in the latter part of 2019. I can see she made a number of calls chasing both P and her energy provider throughout 2020 trying to figure out why she wasn't receiving any benefit. It's not until 2022, that P inspected the system and found the problem with the switch which was then rectified.

Given the system was in Ms E's loft, which is difficult for her to get to, that she doesn't understand the ins and out of solar panel installation and mechanisms, and this problem appears to have occurred since installation, I don't think Ms E can be held responsible for the system issues. Rather, I think it's more likely that the switch was either not switched on during the installation or accidentally switched off at that time by P.

While it does look like the system issue has now been resolved, I don't think it's reasonable that it took so long for this issue to be resolved and Ms E has suffered not only losses in relation to this but significant inconvenience.

So, like Ikano appears to now agree, I think it should compensate Ms E for the losses she has suffered from installation until the problem was rectified in January 2022. I also think Ikano should compensate Ms E for the time and effort she's spent trying to resolve this issue.

Given the system was switched off likely since installation, it's difficult to work out what Ms E's actual losses were during this period. The sales paperwork suggests that Ms E was expected to achieve between £490.70 and £575.02 per year from the system. I think Ikano should use this as a basis for calculating Ms E's loss.

I think Ikano should use the figure of £575.02 per year to work out a daily rate of benefit. It should then compensate her for the lost benefit from the date of installation until the date the system issue was rectified. I also think Ikano should pay Ms E £300 compensation for the trouble and upset she's experienced.

I have also thought about Ms E's wish to unwind the contract. I have no doubt that Ms E is incredibly disappointed with how the system has performed and how she's been treated by P post installation. However, the system is in working order and I've seen nothing to suggest it's faulty. Other than the switch not being turned on, it seems to have functioned as it was designed to. And the issue with the switch has been resolved. Ms E is also going to be compensated for both the losses she suffered as well as for the trouble and upset she's experienced. So, I don't think a full unwind is warranted here.

I understand Ms E's former energy provider has entered administration – while I understand it is frustrating, she will now have to work with her new provider to see what benefit she can sign up for. P (and therefore Ikano) were only responsible for the sale and installation of the system. While I think it ought to have ensured the system was correctly set up at installation, it's under no obligation to sort out issues with her energy providers post sale.

Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that there were no untrue statements of fact made by P that induced Ms E to enter into the contract for the system.

However, I do think it failed to deal with her concerns in a timely manner which caused her to suffer a loss as well as worry and inconvenience. So, I think Ikano should put this right.

Putting things right

To put things right, Ikano should:

- *Pay Ms E £300 compensation for the inconvenience and worry caused.*
- *Pay Ms E the losses she's suffered from the date of installation until the date the system issue was rectified. Ikano should use the annual estimate of £575.02 to work out a daily rate of benefit to calculate Ms E's losses. And as Ms E has been deprived of the benefits, Ikano should add 8% simple interest on to this amount.*

I understand Ms E is disappointed that I haven't upheld her complaint in full, and while I'm sorry she is so disappointed, I have to decide the case based on the available evidence and reach a conclusion that is fair and reasonable. As neither party have made any additional submissions, 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 (and set out above). With this in mind, I uphold this complaint and Ikano should put things right as I've set out below.

Putting things right

To put things right, Ikano must:

- Pay Ms E £300 compensation for the inconvenience and worry caused.
- Pay Ms E the losses she's suffered from the date of installation until the date the system issue was rectified. Ikano should use the annual estimate of £575.02 to work out a daily rate of benefit to calculate Ms E's losses. And as Ms E has been deprived of the benefits, Ikano should add 8% simple interest on to this amount.

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 Ms E to accept or reject my decision before 4 January 2024.

Asma Begum
Ombudsman