

The complaint

Mr J has complained about the way Ikano Bank AB (publ) responded to claims he'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").

Mr J has been represented in bringing his complaint but, to keep things simple, I'll refer to Mr J throughout.

What happened

In October 2017 Mr J entered into a fixed sum loan agreement with Ikano to pay for a £6,895 solar panel system ("the system") from a supplier I'll call "S". The total amount payable under the agreement was £6,895 and it was due to be paid back with 60 monthly repayments of around £115.

In March 2023 Mr J sent a letter of claim to Ikano explaining he thought the system was mis-sold. He said he was 73 at the time of sale and unwell. He said S told him his property was ideal for an installation; the system would be self-funding within the loan term; his electricity bills would reduce significantly; and that he'd receive commission for recommending other customers. He said the system hadn't performed in the way it was promised by S and that it wasn't self-funding. He said he wasn't told he'd need to replace parts at cost or that the system would degrade.

He said the system was misrepresented and believed the statements and several other actions at the time of the sale created an unfair relationship between himself and Ikano.

Ikano responded to the claim and subsequent complaint. It said the sales contract was clear and Mr J 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 savings estimates weren't an exact science and there are many variables that can impact them. It said it thought the system was overperforming. It said it couldn't uphold the complaint on the basis no degradation figures were supplied. It said it wasn't necessary to inform Mr J he'd need to pay for parts outside of warranty. It said Mr J had the right to withdraw from the agreement prior to installation if he wasn't happy with it. Overall, it didn't uphold the claim or subsequent complaint. It requested evidence to show the extent Mr J's health condition affected him.

Mr J decided to refer his 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 Mr J the system would be self-funding within the loan term. She thought he had enough time to decide whether to enter into the agreement. She thought the system was overperforming and didn't think any commission had been paid. She also didn't think she'd seen enough evidence S misrepresented the system.

Mr J didn't agree. He said no consideration was given to his verbal representations. He reiterated he was told the system would be self-funding. He said he wasn't taken through the

sales documentation. He also said he asked for the documents to be printed in larger font but this wasn't done. He said it made no economic sense for him to have bought the system for little or no benefit.

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 exercised 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. Mr J has complained Ikano unfairly declined his claims and that it participated in an alleged unfair relationship. Mr J bought the system using a fixed sum loan agreement. I'm satisfied we can consider complaints such as Mr J's relating to these sorts of regulated consumer credit agreements.

Mr J has referred to the alleged unfair relationship when setting out his complaint. And he'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 Mr J.

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?

Mr J says he was verbally misled that the system would effectively pay for itself within the loan term. So I've taken account of what Mr J says he 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 Mr J 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 form with a contract date of 9 October 2017. This form was signed by Mr J and has a section with the estimated system performance as well as a section for feed in tariff (FIT) and payback. This shows the system was expected to benefit Mr J through:

| | |
|----------------------------------|--------------------|
| Generation payment | £109.68 |
| Export payment | £68.96 |
| Electricity savings (50% to 25%) | £190.29 to £95.14 |
| Total year 1 estimate | £368.94 to £273.80 |

I think Mr J he ought to have known broadly what sort of benefit he could expect from the system because he signed the form. I think it likely would have been a central part of the discussion, and I'm conscious the form has all the relevant information on one page. From what I've seen, he signed the fixed sum loan on the 9 October 2017 as well. I've already explained why I think the fixed sum loan agreement was fairly clear. So I think he would have seen his annual payments towards it were over £1,300. It's not clear why he didn't query things straight away if he was told the system was self-funding within the loan term when he'd also been told about an estimated year 1 benefit of between around £270 to £370 (depending on how much electricity he self-consumed).

I appreciate the events were from quite a few years ago. While I've taken account of what Mr J says he was told I'd like to have been more certain S misled him about the system being self-funding within the loan term. He's said he was unwell at the time, and that he requested larger font documentation. I'm very sorry to hear Mr J was unwell. S is no longer trading, so we're unable to obtain its testimony. I think Ikano fairly asked Mr J if he had any supporting evidence to detail the nature in which he was affected. Other than Mr J's testimony, Ikano wasn't supplied with any other supporting evidence such as a professional medical opinion which may have been helpful. While Mr J hasn't set out he didn't have capacity to make the decision to purchase, Ikano (and S) needed to assume he had capacity at the time to make that decision unless it knew, or was told by a person it reasonably believes should have known that wasn't right. On balance, I don't think I've seen enough to conclude that's been shown. And I'm mindful Ikano (or S) weren't able to discriminate against Mr J because of his age.

Like our investigator pointed out, I also think the system seems to have overperformed. It seems as though it's yielding around 3,000kWh whereas it was expected to yield around 2,500kWh. Ikano said that over the 5-year loan term the degradation would only likely have reduced the yield by around 75kWh and has provided some calculations which seem reasonable. While S could have explained more about the estimated degradation of the panels given it's overperforming to this extent I don't think this leads to a different outcome for the complaint. I also can't see that there's sufficient evidence S misled Mr J about possibly having to replace parts on the system.

I've also thought about some of the other points Mr J mentioned in his complaint letter. As I don't think commission was paid, I'm not persuaded there's anything to decide in relation to that. The contract Mr J entered into had a 14 day right to cancel. The system wasn't installed until 31 October 2017 so if he was unhappy, didn't understand or felt pressured to sign, he had the opportunity to cancel the agreement. I'm not sure he's provided sufficient evidence that any of the other points he's raised would lead to a different outcome either.

Overall and on balance, while I'm very sympathetic to the situation, bearing in mind I need to resolve this complaint quickly and with minimum formality, 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 Mr J to accept or reject my decision before 23 December 2024.

Simon Wingfield
Ombudsman