DRN-4942142

The complaint

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

Mr A has been represented in his complaint. For simplicity, I have referred to Mr A throughout this decision.

What happened

On 18 July 2019 Mr A 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 cost of the system was £9,379 and that was credit amount. The total amount payable under the agreement was £12,362.15. Mr A had nothing to pay for the first 12 months, then he was due to pay back the agreement with 119 monthly repayments of £103.02 followed by a single payment of £102.77.

Mr A put in a claim with Ikano explaining he thought the system was mis-sold. In summary, he said that P:

- Told him that the system would be self-funding.
- Had deliberately misled him at the point of sale as the system has not been self-funding.
- Made misleading statements for which Ikano was responsible.
- Were responsible for installation issues.

Ultimately, Mr A 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 sent a final response letter and said the documentation provided didn't show that the system had been misrepresented.

Mr A'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 Mr A. Our investigator didn't recommend that complaint be upheld.

Mr A was disappointed with that assessment and 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.

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 CCA ("s.56" and "s.75"). S.75 provides protection for consumers for goods or services bought using credit. As Mr A paid for the system with a fixed sum loan agreement, s.75 applies to this transaction. This means that Mr A could claim against Ikano, the creditor, for any misrepresentation or breach of contract by the supplier in the same way he could have claimed against the supplier. So, I've taken s.75 into account when deciding what is fair in the circumstances of this case.

S.56 is also relevant. This sets out that any negotiations between Mr A and 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.

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.

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.

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".

What happened?

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

The fixed sum loan agreement signed by Mr A and dated 18 July 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 Mr A to be able to understand what was required to be repaid towards the agreement.

I'm also mindful that the proposal form is signed by Mr A and dated 19 July 2019. This contained a section which described the estimated annual output and likely benefits. This suggested the estimated year one benefits could be £652.50. Directly underneath this it says,

"The performance of solar PV systems is impossible to predict with certainty due to the variability in the amount of solar radiation (sunlight) from location to location and from year to year… This estimate, based upon the standard MCS procedure, is given as guidance only. It should not be considered as a guarantee of performance"

The contract is dated 20 August 2019 and includes estimated energy production and financial benefit estimates. This showed a *'Total Estimated year 1 Benefit could be between £168.25 and £336.50'*. This information is prominently displayed and is on the page above the one signed by Mr A.

I think the above mentioned information ought to have shown Mr A the savings wouldn't have covered the annual loan repayments cost which would be around £1,236.24 when they became due to be paid. I would have expected Mr A to have queried the shortfall if he'd been told the system would be self-funding.

Overall, while I've carefully considered what Mr A says he was told, given what I've set out above, I'm not persuaded there's sufficient evidence Mr A was misled the system would be self-funding. Therefore, I don't have the grounds to say that Ikano misrepresented the system to Mr A 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.

Additional points

In addition, I'm not persuaded that a court would conclude Mr A's relationship with Ikano was unfair on him because:

- Ikano told us they paid no commission to the supplier.
- Mr A was provided with pre-contract information, including his cancellation rights.
- The loan agreement clearly set out the costs, including the monthly loan repayments and total amount repayable, so I think Mr A would've understood this.
- Ikano carried out a creditworthiness assessment, and I've seen insufficient evidence from Mr A that the check was insufficient or that the check should have led Ikano to have rejected Mr A's loan application.

Mr A has told us that the savings have been less than the estimated savings in the contract. I have seen insufficient evidence that those figures were anything other than estimated benefits. And Mr A has not been able to evidence his pre installation energy costs. So, I do not think that the supplier's alleged failures have been sufficiently evidenced for me to think this amounted to a breach of contract.

I have noted that Mr A says the items supplied were different to those he thought might be supplied. The supplier said that was discussed at the time and Mr A thinks it wasn't. I have noted that the quotation letter dated 19 July 2019, says, *"Parts quoted are subject to availability and may be substituted with equal or better parts."*

And in this case the solar panels fitted were equivalent to those included in the initial quotation. I note the original proposal was to provide a system with an installed capacity of 4.62KW. I can see that the MSC certificate shows that the system installed had a capacity of 4.62KW.

So, having thought about all the submissions made to me in this case, I can't say that Ikano are responsible for a breach of contract by P by fitting alternative parts. And, in any event, I can't see that Mr A has suffered a loss as a result of the alternative solar panels that were supplied.

Mr A has subsequently paid for bird proofing and thinks this indicates that work was not undertaken with due care. But I note this was not a part of any quotation or of the contract that I have seen.

Mr A felt that it wasn't pointed out that some parts would need to be replaced in the lifetime of the system. The letter dated 19 July 2019 referred to above also includes a summary of the warranties that apply to the work. One part has a warranty of 25 years and another for 15 years. So, I do not think that the supplier failed to be clear about this. Neither do I think that the lifetime of a warranty proves that a part will certainly fail at its expiration. So, I do not think I have seen sufficient evidence to find the supplier was negligent in the provision of information on this point.

Mr A has told us that his property was not ready for a full installation at the time. Subsequently, Mr A paid someone on a private basis to facilitate his connection to Social Energy. I have seen insufficient evidence to find the supplier negligent for the initial installation when the property was not ready for it or for the work of someone acting as a private contractor subsequently.

Summary

Overall, I do not think the alleged misrepresentation took place or that the relationship between Mr A and Ikano was unfair on him. And I don't think that the system was deficient such as to suggest a breach of contract occurred. So, I don't think that Ikano acted unfairly when it rejected Mr A's claim and complaint.

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 Mr A to accept or reject my decision before 21 February 2025.

Douglas Sayers
Ombudsman