DRN-4961762

The complaint

Mr B has complained about Ikano Bank AB (publ) ('Ikano')'s response to a claim he made under Section 75 ('s.75') of the Consumer Credit Act 1974 (the 'CCA') and in relation to allegations of an unfair relationship taking into account Section 140A ('s.140A') of the CCA.

What happened

In June 2015, Mr B bought a solar panel system ('the system'), from a company I'll call "the supplier", using a ten-year fixed sum loan from Ikano.

In August 2021, Mr B made a claim to Ikano through a claims management company ("CMC"). This said that he was told by the supplier that the income and savings from the system would fund the cost of the loan so he would be no worse off each month. Mr B says that never happened. The CMC also said that what happened at the time of the sale created an unfair relationship between him and Ikano, including because:

1. No pre-contract credit information was provided to Mr B.
2. There is no evidence that Mr B was given notice of his cancellation rights.
3. The sale took place in a high-pressure selling environment.
4. Full details of the credit agreement were not explained to Mr B, and he did not understand the total costs of the loan.
5. Ikano received commission which Mr B was not told about.

Ikano responded to the claim in October 2021 to say that Mr B had brought his claim too late so it would not investigate the matter.

Unhappy with Ikano's response, Mr B contacted the Financial Ombudsman Service and we informed Ikano of his complaint.

Ikano did not provide a final response to the complaint within eight weeks, so our investigator looked into what had happened. He said that:

- Given the s.75 claim was likely to be time barred under the Limitation Act, Ikano's answer seemed fair.
- The s.140A complaint was one we could look at under our rules and that it had been referred in time.
- Misrepresentations could be considered under s.140A.
- A court would likely find an unfair relationship had been created between Mr B and Ikano.

Our Investigator recommended that Mr B keep the system and Ikano take into account what Mr B had paid so far, along with the benefits he received, making sure the system was effectively self-funding.

Ikano disagreed with this. It said that the supplier's sales documents included information on the estimated benefits of the system. And that the letter of claim suggested the consumer had received this, since it said, "The Claimant has entered into an agreement with a monthly

instalment payment of £87.81 with an estimated saving of £530.00 per year". While Ikano didn't have a copy of Mr B's contract showing this information, it provided an extract of what it called a "typical example". Ikano said that the point-of-sale documents were clear enough to show that the system wouldn't be self-funding based on the purchase price.

Since the complaint has not been resolved, I've been asked to make a decision. I issued a provisional decision explaining I was not planning to uphold this complaint. Neither Ikano nor Mr B nor his representative responded by the deadline I gave. So, my final decision is in line with my provisional one.

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.

I've decided not to uphold this complaint.

My findings on jurisdiction

I'm satisfied I have jurisdiction to consider Mr B's complaint, both in respect of the refusal by Ikano to accept and pay his s.75 claim and the allegations of an unfair relationship under s.140A.

The s.75 complaint

The event complained of here is Ikano's alleged wrongful rejection of Mr B's s.75 claim on 26 October 2021. This relates to a regulated activity under our compulsory jurisdiction. Mr B brought his complaint about this to the Financial Ombudsman Service in November 2021. So, his complaint in relation to the s.75 claim was brought in time for the purposes of our jurisdiction.

The unfair relationship under s.140A complaint

The event complained of is Ikano's participation, for so long as the credit relationship continues, in an alleged unfair relationship with Mr B. Here the relationship was ongoing at the time it was referred to the Financial Ombudsman Service, so the complaint has been brought in time for the purposes of our jurisdiction.

My findings on the merits of the complaint

The s.75 complaint

The law imposes a six-year limitation period on claims for misrepresentation and breach of contract, after which they become time barred.

In this case the alleged misrepresentation and cause of action arose when an agreement was entered into on 25 June 2015. Mr B brought his s.75 claim to Ikano on 27 August 2021. That is more than six years after he entered into the credit agreement with Ikano. So, it appears Ikano would have no liability for s s.75 claim in relation to this. As such, I do not uphold this aspect of the complaint.

The unfair relationship under s.140A complaint

When considering whether representations and contractual promises by the supplier 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 the supplier 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 the supplier for which Ikano were responsible under s.56 when considering whether it is likely Ikano had acted fairly and reasonably towards Mr B.

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 Mr B was told at the time of sale

The letter of claim says that Mr B was told that the income and savings from the system would fund the cost of the loan so he would be no worse off each month. However, when our investigator spoke to Mr B about his recollection, he said that he was told the loan repayments would be covered by the income only. Because of this inconsistency, it makes it harder for me to accept that Mr B's recollections are accurate and not mistaken. I'm mindful that the sale took place a long time ago, and as time passes a person's memories can become less reliable.

I have also looked at the documents from the time of sale to see if these reinforce or contradict what Mr B remembers.

Mr B has provided all the sales documents in his possession. This does not include the more detailed benefits information referred to by Ikano. In my opinion, the example of this Ikano provided is not strong evidence in this case. I cannot reasonably conclude that this type of information was provided to Mr B.

I appreciate Ikano's point about what the CMC has said, but I don't think this is sufficient to conclude Mr B was given such information. Particularly when this is not included in the information Mr B has provided to us – which he provided to us directly at the request of our investigator.

Nevertheless, the contract Mr B provided us with undermines his recollection of what happened at the time of sale. It provides the following information about the costs and benefits of the system:

- Total price incl VAT: £6759.00 (funded, no deposit)
- Output: 1745 kWh
- 1st year FIT: £233.66 guaranteed

So, the contract appears to make clear that Mr B can expect to receive an income from the Feed-In Tariff ("FIT") of just £233.66 in the first year. This contract was signed by Mr B on 22 June 2015.

I'm satisfied that Mr B is likely to have discussed and completed the application for the loan at the same time. I say this because Mr B has confirmed there was only one meeting with the supplier. And the initial information he was given about the loan was that the lender was another financial business (not Ikano).

Mr B has provided a copy of the pre-contract information he was initially given – presumably at the meeting given it was handwritten, although the date is not visible on the copy provided. The details of the loan were similar to the Ikano loan, the only differences being that there was an admin fee of £95 added to the loan, which increased the loan repayments slightly, to £88.61 per month.

So, it appears likely that at the time of agreeing to the contract Mr B was told that the first-year income from the system would be £233.66, and his monthly repayments would be around £88. With that in mind I think it would've been clear that the income would not cover the loan repayments. It seems unlikely to me that the supplier would've told Mr B this while also giving him the information on the contract.

Even if Mr B wasn't aware of the exact loan repayment at the time he signed the contract, the loan was for ten years. So, even without interest he would have expected to pay £675.90 per year – just to repay the purchase price. This is still much more than the first-year income shown on the contract.

Mr B actually signed the credit agreement on 25 June 2015. So, at that time he had been given the contract – showing his first-year income of £233.66, and the credit agreement showing the monthly loan repayments of £86.81 (which equates to £1,041.72 per year). Bearing this in mind, I don't think I can reasonably conclude that Mr B was told the income from the system would cover the loan repayments.

The letter of claim says that Mr B was told the combined income and savings would cover the loan repayments. But it seems unlikely that he was told this given that is not what he remembers. And looking at the annual electricity generation figure of 1,745 kWh, this would not be sufficient to provide a saving of £808.06 – which is what would be required to make up the shortfall between the first-year income shown on the contract and the annual loan repayment.

The industry standard approach at the time was to assume that a consumer would use 50% of the electricity generated by a solar power system. Here, that would be 872.5 kWh. This would require Mr B to be paying his electricity supplier over 92p per kWh, which is more than six times the typical electricity unit rate consumers were charged in 2014. Bearing in mind the estimated income of £233.66 appears to be reasonable for Mr B's system, it seems unlikely that the supplier would've overstated the savings so drastically.

I'm also mindful that if Mr B had been told the benefits of the system (whether just the income or the combined income and savings) would cover the loan repayments, it would've been clear to him quite quickly that this was not happening from looking at his FIT statements and electricity bills. If that was his expectation, it is surprising that Mr B did not take any action about this until over six years later – such as raising a complaint with the supplier.

Overall, I am not persuaded that the supplier told Mr B that the income (or income and savings) from the system would fund the cost of the loan so he would be no worse off each month. Rather he was given what appears to be a reasonable estimate of the FIT income he could expect in the first year. Given the amount of electricity Mr B's system has generated, it appears that he will have received the at least the estimated income shown on the contract.

Other points from the letter of claim

The letter of claim makes some other points as to why the relationship between Mr B and Ikano may be unfair. So, I have thought about these as well. I explain my findings below. Overall, I do not think it is likely that any of these points would render Mr B's relationship with Ikano unfair.

1. *No pre-contract credit information was provided to Mr B.*

Mr B has sent us a copy of the pre-contract credit information he was provided with – so it is clear he was given this.

2. *There is no evidence that Mr B was given notice of his cancellation rights.*

The contract Mr B provided to us included notice of his cancellation rights in the terms and conditions on the back. This included a form to be completed in order to request cancellation.

Ikano's welcome letter also confirmed that Mr B had the right to withdraw from the credit agreement within 14 days.

So, I'm satisfied Mr B was given notice of his cancellation rights.

3. *The sale took place in a high-pressure selling environment.*

The letter of claim has not set out what pressure was applied. And Mr B did not mention any concerns about being pressured into signing the contract when he spoke to our investigator. So, I think there is insufficient evidence that Mr B was pressured into the agreement.

4. *Full details of the credit agreement were not explained to Mr B, and he did not understand the total costs of the loan.*

Mr B was provided with the pre-contract credit information, which set out in full what he was agreeing to pay. So, I think he was given those details and could've asked about anything he was unsure of.

5. *Ikano received commission which Mr B was not told about.*

It would be unusual for a lender to receive commission in a situation such as this – given it is receiving the interest on the loan repayments, or how this would've made Ikano's relationship with Mr B unfair.

Summary

I don't think Ikano had any liability under s.75. And I am not persuaded that a Court would conclude that Mr B's relationship with Ikano was unfair. Overall, I've found no compelling reason as to why this complaint should be upheld.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 September 2024.

Phillip Lai-Fang
Ombudsman