

The complaint

Mr G 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 ("s140A") of the Consumer Credit Act 1974 (the "CCA").

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

What happened

In November 2016 Mr G entered into a fixed sum loan agreement with Ikano to pay for a £8,990 solar panel system ("the system") from a supplier I'll call "T". The total amount payable under the agreement was £11,569.14 and it was due to be paid back with 119 monthly repayments of £96.42 and a final repayment of £95.16.

The system was commissioned in January 2017. In February 2022 Mr G sent a letter of claim to Ikano explaining he thought the system was mis-sold.

He said T told him he'd effectively be paid for the electricity the system generated through the government's Feed in Tariff (FIT) payments and that he'd have reduced energy bills. He said T told him he'd receive a guaranteed income for 20 years; he'd earn up to 10% annually tax-free; his property value would increase; and that the panels were maintenance free with at least a 25-year life expectancy. He said T sold the system as being self-funding within the loan term. 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 broadly set out that there was a lack of documentation supplied from the point of sale, so it was unable to investigate some of what Mr G had complained about. It said it didn't think the relationship was unfair and that it had complied with all relevant law, rules and guidelines in force. It also said no commission had been paid. It said Mr G had rights to withdraw if he wasn't happy. It said the savings Mr G may have been told he'd make were estimates. It said there was no evidence it didn't carry out a proper affordability assessment. It didn't uphold the claim and a complaint was raised and referred to the Financial Ombudsman. Ikano didn't uphold the complaint either in its October 2022 final response letter. Mr G asked the Financial Ombudsman to consider his complaint.

One of our investigators looked into things and broadly said she didn't think Mr G was given clear information about the savings or income he would likely receive from the system. She thought it was reasonable for Mr G to rely on information given by T and that she thought T most likely sold the system as being self-funding within the loan term. She noted she'd not been supplied any documentation from the point of sale that clearly showed the costs against the benefits. She concluded the system was misrepresented. She thought Ikano should recalculate the loan based on known and assumed savings over the course of the loan so Mr G pays no more than that. She also recommended Ikano pay Mr G £100 compensation for the trouble and upset caused.

Ikano didn't accept the view. It said there was insufficient evidence of misrepresentation. It said the Financial Ombudsman had previously deemed the contract provided by T to be sufficiently clear on another case. It said there was a lack of testimony from Mr G, and that there was nothing on T's website from around the time of sale that set out the systems sold would be self-funding.

Our investigator spoke to Mr G to obtain further testimony and her view didn't change. Ikano sent a further response to broadly say:

- It disagreed with the outcome and there was no evidence to show the system was misrepresented.
- In accordance with the court decision in *Hodgson v Creation Consumer Finance Limited* [2021] EWHC 2167 (Comm) ("Hodgson") it said little weight should be given to witness evidence on recollection of events from so long ago.
- Ikano made no representations to Mr G.
- There's no evidence that T generally sold systems on the basis they were self-funding. The promotional material it had seen supports that.
- Mr G is making savings through the system. And there was a reason for customers to purchase solar panel systems and they're now reaping the benefits.
- Without prejudice to its position on the complaint it considers the approach to redress should be in accordance with the court decision in Hodgson.
- Other similar complaints have not been upheld.
- Mr G would have signed a validation sheet setting out, amongst other things, he understood how the loan agreement worked and that he'd been given a full explanation of the goods.
- It would have been reasonable to expect him to complain sooner if T misrepresented the system.
- There was some time between signing the contract and the loan agreement. Mr G had 12 days to consider the purchase. And if the representations were made when Mr G signed the loan agreement it can't be said he relied on them when entering into the contract.
- Mr G hadn't supplied evidence such as FIT statements.

I issued a provisional decision that said:

The agreement was entered into in November 2016; the claim and complaint was raised in February 2022; and it was referred to our service in October 2022, I think Mr G's complaint has been brought within the relevant timescales.

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

Mr G 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 T 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 T 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 T 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 T for which Ikano was responsible under s.56 when considering whether it is likely Ikano had acted fairly and reasonably towards Mr G.

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 G 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 G 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 G 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 has not been able to supply copies of the paperwork Mr G was left with. Although it's been able to supply examples of the sort of paperwork it says Mr G was likely left with. The problem I have is that Mr G has said the only paperwork from the point of sale that was left with him was limited, and it didn't include the type of paperwork Ikano sent an example of. It's hard to know how much weight to put on the example paperwork Ikano has shown us. The FIT payments on it are from July 2013 which were very different to 2017. So it's not clear if that would've been the same marketing material in 2017. But I note the paperwork sets out that buying a system makes sense because the customer is committed to spending the money anyway; fuel prices will rise; it's government backed; it gives the house more saleability; it reduces the customer's carbon footprint; it's risk free with a high yield and that it's an inflation proof investment. So I agree it's likely those sorts of benefits would have been a key selling feature and that they would've formed a central part of Mr G and T's discussion.

Mr G has shown us a contract that sets out the type and cost of the system. But it doesn't include the interest that was required to be paid. He's supplied a page of a validation sheet that sets out the loan details (including interest) as well as details of the system size. Curiously, it looks like the system size on the validation sheet (2,874.8kWh) is slightly higher than what is on the MCS certificate (2,685kWh). But the validation sheet I've seen doesn't set out any of the financial benefits Mr G would likely receive. I've not seen enough to demonstrate Mr G had documentation, from the point of sale, that would've given him enough information about the savings he'd likely make from the solar panels so he could compare his total costs to the benefits he'd likely receive.

Ikano hasn't supplied evidence of what was (or wasn't) discussed at the point of sale. It's mentioned other cases involving the same supplier that haven't been upheld. But I need to consider each case on its own merits.

I've not seen anything to indicate Mr G had an interest in purchasing a solar panel system before he contacted T off the back of an advert. Mr G has said he only agreed to the purchase because T told him the system would pay for itself within the loan term. He said T told him the purchase was an investment and that it showed him a graph projection showing the same. I'm mindful that it would be difficult to understand why, in this particular case, Mr G would have agreed to install a solar panel system if his monthly outgoings would increase significantly.

I'd like to have seen more documentary evidence in this case, but I'm able to consider Mr G's testimony. I'm required to decide the case quickly and with minimum formality and I need to consider what is fair and reasonable in all the circumstances. Moreover, where the evidence is incomplete or inconclusive (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances. On balance, I find Mr G's account to be plausible and convincing.

For the solar panels to be self-funding, they'd need to produce a combined savings of around £1,150 per year. Mr G said his meter reading was 17,376kWh on 29 November 2022. So based on the commissioning date of 6 January 2017 it looks like Mr G's system was generating nearly 3,000kWh annually, which is slightly over the estimate on the MCS certificate and validation sheet. But I've not seen anything to suggest he's achieved the benefit required to make the system self-funding within the loan term. Based on what I've tried to calculate, taking into account the 2017 generation and export FIT it seems like it would take significantly longer than the loan term to be self-funding. If it was sold as a 'high yield' investment as per the marketing material Ikano showed us, I'm not persuaded that would be a fair reflection. I therefore find the statements that were likely made as to the self-funding nature of the system weren't true. I think the salesperson ought to have known this and made it clear that the solar panel system wouldn't have produced enough benefits to cover the overall cost of the fixed sum loan agreement within the term.

Taking into account what I've said above, I think it likely T gave Mr G a false and misleading impression of the self-funding nature of the solar panel system. I consider T's misleading presentation went to an important aspect of the transaction for the system, namely the benefits which Mr G was expected to receive by agreeing to installation of the system. I consider that T's assurances in this regard likely amounted to a contractual promise that the solar panel system would have the capacity to fund the loan repayments. But even if they did not have that effect, they nonetheless represented the basis upon which Mr G went into the transaction. Either way, on balance, I think T's assurances were misleading and false, undermining the purpose of the transaction from Mr G's point of view.

Fair compensation

In all the circumstances I consider that fair compensation should aim to remedy the unfairness of Mr G and Ikano's relationship arising out of T's misleading and false assurances as to the self-funding nature of the solar panel system. Ikano should repay Mr G a sum that corresponds to the outcome he could reasonably have expected as a result of T's assurances. That is, that Mr G's loan repayments should amount to no more than the financial benefits he received for the duration of the loan agreement.

Ikano has highlighted the court's decision in Hodgson.

I have considered the Hodgson judgment, but this doesn't persuade me I should adopt a different approach to fair compensation. Hodgson concerned a legal claim for damages for misrepresentation, whereas I'm considering fair redress for a complaint where I consider it likely the supplier made a contractual promise regarding the self-funding nature of the solar panel system. And even if I am wrong about that I am satisfied the assurances were such that fair compensation should be based on Mr G's expectation of what he would receive. I consider Mr G has lost out, and has suffered unfairness in his relationship with Ikano, to the extent that his loan repayments to Ikano exceed the benefits from the solar panels. On that basis, I believe my determination results in fair compensation for Mr G.

Ikano should also be aware that whether my determination constitutes a money award or direction (or a combination) what I decide is fair compensation need not be what a court would award or order. This reflects the nature of the ombudsman service's scheme as one which is intended to be fair, quick, and informal.

Therefore, to resolve the complaint, Ikano should recalculate the agreement based on the known and/or assumed savings and income Mr G received (or will receive) from the solar panel system over the 10-year term of the loan, so he pays no more than that. To do that, I think it's important to consider the benefit Mr G received (or will receive) by way of FIT payments as well as through energy savings. Mr G will need to supply up to date details, where available, of all FIT benefits received, electricity bills and current meter readings to Ikano.

I note Mr G has raised other claims and complaints but, given the findings I'm intending to make, I don't need to deal with those other complaints to reach a fair outcome.

Finally, our investigator recommended £100 compensation, but as I think Ikano did respond to the claims that were raised, I'm not going to propose it needs to do that.

Mr G accepted the provisional decision, but Ikano didn't. In summary it said it didn't think Mr G's testimony was a fair basis for upholding the complaint because it was inconsistent. It said Mr G originally said his complaint would be followed by supporting documentation but then changed his mind. It said some of the representations Mr G said were made were true; some were unclear; and there was no evidence others were made.

Ikano said the burden of proof for misrepresentation occurred was on Mr G as the debtor and it's unfair to uphold the complaint without evidence or else he could benefit from withholding information. It said it was aware T gave customers information about the estimated benefits. It said it hadn't been shown that the claim the system would be self-funding was what induced Mr G to enter the agreement. It said there were other selling points that would've contributed to his decision to buy the system. It also said there was no evidence the system wouldn't pay for itself within its lifetime.

Ikano also highlighted it took Mr G nearly six years to raise his claim, and it would've expected him to raise it sooner if he was told the system was self-funding within the loan term.

Ikano said it didn't have a copy of the 2016 sales documentation for Mr G but it has been supplied documents from other customers from around that time. It said Mr G would have been supplied a copy of calculations which would've allowed him to compare the costs against the benefits. It thought it likely Mr G would've been given a copy of the documents. It was unconvinced by Mr G's testimony he went ahead with the purchase without a proper understanding of what the system could be expected to provide.

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'd like to thank the parties for their responses. Neither party has submitted anything materially new for me to consider, so I see no reason to depart from the conclusions I reached in my provisional decision.

Ikano said there's no evidence certain representations were made, but I think Mr G's testimony is evidence I'm able to consider.

On the one hand, Mr G said he wasn't left with documentation about the estimated benefits, and our investigator said they've seen other cases where the estimated benefits were inflated. But on the other hand, Ikano has said Mr G would've likely been left with accurate information that set out the estimated benefits in order for him to easily compare against the costs.

Neither party has been able to supply a copy of the form that showed Mr G was supplied details of the estimated benefits of having the system. And as I pointed out in my provisional decision, even if T had given Mr G the sales material Ikano has said was likely supplied, I think some of that information would have been misleading – in the particular circumstances of Mr G's complaint. The FIT generation tariff Mr G received from 2017 was significantly less than that showed in the sales material Ikano has shown me. Moreover, with a system yielding under 3,000kWh installed in January 2017, using some basic calculations, even with the system slightly overperforming, I don't think it would be fair to describe it as high yield given the total cost and how long it would likely take to pay for itself. It would likely take around twice as long as Mr G said he was told for it to pay for itself – closer to the end of the expected lifetime of the system. The sales material highlights the benefits of having a system installed, and I agree that the financial benefits were likely a key factor in Mr G's decision to purchase the system. He's said he had no interest in solar panels before speaking to T, and he only bought the system for the financial benefits, which seems plausible. It's therefore hard to understand how the purchase would have been appealing at all, for the particular circumstances of Mr G's case.

Ikano said Mr G has been inconsistent with regards to the documentation, but he has supplied some documentation. And I think he's been consistent in saying T told him the system would be self-funding within the loan term.

Working out the benefits of having the system installed isn't easy. Mr G would have had to compare his electricity bills, FIT statements, and loan repayments over a prolonged period. The systems are sold as having increasing benefits year on year. And it may take a few years to be able to see an accurate estimation of how the system is performing given the nature of weather. So I don't think Mr G's complaint should be discounted because he didn't complain straight away.

All things considered, it's not straight-forward but, on balance, based on what I've seen I still find Mr G's account to be plausible and convincing, so I reach the same outcome as my provisional decision.

My final decision

My final decision is that I uphold this complaint and direct Ikano Bank AB (publ) to:

- Calculate the total payments Mr G has made towards the solar panel system – A
- Use Mr G's bills and FIT statements to work out the benefits he received from the start date of the loan, up until the date of settlement – B
- Use B to recalculate what Mr G should have paid each month towards the loan over that period and calculate the difference, between what he actually paid (A), and what he should have paid, applying 8% simple annual interest to any overpayment from the date of payment until the date of settlement* – C
- Reimburse C to Mr G
- Use Mr G's bills and FIT statements to work out the benefits he will receive for the period between the settlement of his complaint and the end of the original loan term – D
- Rework the loan so that the remaining balance is D and recalculate the remaining monthly payments equally over the remaining term of the loan or allow Mr G to continue with his current payment so the loan finishes early.

*If Ikano considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr G how much it's taken off. It should also give Mr G a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 November 2024.

Simon Wingfield
Ombudsman