

The complaint

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

What happened

In January 2019 Mr K entered into a fixed sum loan agreement with Ikano to pay for a £8,450 solar panel system ("the system") from a supplier I'll call "S". The total amount payable under the agreement was £13,675.55 and it was due to be paid back with 119 monthly repayments of £113.98 and a final repayment of £111.93.

In January 2022 Mr K sent a letter of claim to Ikano explaining he thought the system was mis-sold. He said S 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 S told him he'd receive a guaranteed income for 20 years; and that the panels were maintenance free with at least a 25-year life expectancy. He said S 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 subsequent complaint. It said it Mr K didn't supply sufficient documentation to support his assertions. It said no commission was paid; it carried out adequate affordability checks; and Mr K had the right to withdraw from the credit agreement. It said it later obtained evidence including the contract and SEM calculations. It said it thought the documentation clearly showed the system wouldn't be self-funding within the loan term. It said it didn't think the loan was mis-sold. Mr K decided to bring his complaint to the Financial Ombudsman.

One of our investigators looked into things and ultimately said she didn't think Mr K was given clear enough information about the savings or income he would likely receive from the system. She thought it was reasonable for Mr K to rely on information given by S and that she thought S most likely sold the system as being self-funding within the loan term. 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 K pays no more than that. She also recommended Ikano pay Mr K £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 S to be sufficiently clear on another case.

Our investigator spoke to Mr K to obtain further testimony and her view didn't change. Ikano sent a further response to broadly say Mr K would have had view of the estimated benefits of

the system when he entered into the fixed sum loan agreement. It reiterated the documentation was clear enough and that it didn't think there'd been a misrepresentation.

I issued a provisional decision that said:

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

Mr K 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 K.

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 K 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 K 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 K 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.

Mr K was supplied several other documents at the point of sale. The form that Ikano says is important is a form signed by Mr K on 28 December 2018 called 'Performance Estimation'. This form sets out system details, and it also has a section for the estimated year one benefits. This says the system was expected to benefit Mr K through:

Feed in tariff	£123.66
Export tariff	£85.49
Electricity savings (25% to 50%)	£119.75 to £239.50
 Total year 1 estimate	 £328.90 to £448.65

I think before Mr K entered the fixed sum loan agreement, he ought to have known broadly what sort of benefit he could expect from the system because he'd signed the form. From what I've seen, he signed the fixed sum loan around two weeks later. So when Mr K signed that fixed sum loan agreement, 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 £330 to £450 (depending on how much electricity he self-consumed).

One of our investigators spoke to Mr K about the sale. I've listened to that call and thought about it carefully. Mr K said he thought he was likely cold called by S and he agreed to the meeting. It seems that his motivation for buying the system was to save money. He said he thought he'd received less through FIT than was promised. And he said he has a small pension that is paying for the system. Mr K said he can't recall there being two meetings, but he said he may have been considering buying the system for cash using his savings. What's key though is that he said he remembers S telling him the system would be partly paid through the savings it would make. On balance, I don't think Mr K clearly said he was told it would be self-funding within the loan term. He didn't explain that the FIT and savings he'd make would cover the loan payments. And he didn't say why he didn't query things when he signed the loan agreement, if it didn't match what he'd been promised.

I appreciate the events were from quite a few years ago. But I'd like to have been more certain Mr K was misled about the system being self-funding within the loan term. Mr K told us S sold the system as partly paying for the loan agreement, which I think is what's happened. He's said he's received less through FIT than expected. I can't see he's supplied evidence of that, or that a complaint has been raised about a fault with the system. But if that's not right, or if I've misunderstood, he can send evidence in response to this provisional decision.

I've also thought about some of the other points Mr K 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 K entered into had a 14 day right to cancel, so I'm not sure why he thought it hadn't. And with regards to the affordability of the agreement, given Mr K said he considered buying the system for cash using savings, and given he's saying he uses a small pension to cover the payments, I'm not sure he's provided sufficient evidence that this complaint would lead to a different outcome.

Overall and on balance, 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.

Ikano had nothing further to add, and I can't see we received a response from Mr K.

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.

Seeing as though I can't see we've received anything new to consider I see no reason to

depart from the conclusions I reached in my provisional decision.

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 K to accept or reject my decision before 3 January 2025.

Simon Wingfield
Ombudsman