

complaint

Mrs O thinks Ikano Bank AB (publ) ('Ikano') has unfairly rejected her claim under section 75 of the Consumer Credit Act 1974 ('CCA').

background

I issued a provisional decision on 5 November 2019. A copy of my provisional decision is attached and forms part of this final decision. As my final decision will be published on our website, I've amended my provisional decision by replacing the name of the business that supplied the solar panel system with '[Business 1]'.

My provisional decision sets out the background to this complaint and explains why I think Mrs O's complaint should be upheld and what I think Ikano should do to put things right.

Mrs O's representative has confirmed that it's received my provisional decision and says it has nothing to add.

Ikano says it doesn't agree with my provisional decision. I've summarised and addressed its reply below.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

- Ikano says it's unfair that the remedy I proposed in my provisional decision doesn't take into account the lifetime benefits of the solar panel system. It says: 'In effect, the customer will be effectively be profiting from their installation for the foreseeable future.' And it says it doesn't see how this is 'a fair and reasonable outcome for both parties'.
- Ikano says that 'although the [marketing] material clearly states "Self-funding" and "Never spend a penny", there are no timescales attached to those'.
- Ikano says the flyer's claim that the loans can be serviced in full by the subsidies is 'actually true' because of the lifetime benefits of the solar panel system.

I shall address the second and third points first and together.

As I explained in my provisional decision, the flyer says, 'Never spend a penny'. And, below, I've transcribed, as I did in my provisional decision, exactly what the flyer says about the loans being 'serviced in full by the subsidies':

'In combination, finance companies are offering loans for the systems which can be serviced in full by the subsidies – *meaning you are never out of pocket!*
Save the environment and make thousands of pounds!' (Emphasis added)

The word 'never' means 'at no time, not ever'. 'Never' is the timescale attached to these claims, which are, as I said in my provisional decision, unambiguous.

The words I've emphasised above clarify exactly what's meant by 'loans for the systems...can be serviced in full by the subsidies'. If the consumer is 'never ['at no time, not ever'] out of pocket', it must mean the subsidies cover the loan payments in full, when they

are due and payable – otherwise the consumer is out of pocket, for a time at least. The words I've emphasised above mean Ikano's submission that it could or should be read, 'loans for the systems...can be serviced in full by the *lifetime* subsidies of the system', is untenable.

That said, in my provisional decision, I made it clear that Mrs O may not necessarily have seen the flyer. And I said Mrs O's testimony alone, in context and considering her circumstances, was enough for me to uphold her complaint. Ikano hasn't commented on this at all.

All things considered, I remain of the opinion that Mrs O was told the solar panel system would pay for itself over the term of the loan, and that's why she agreed to it.

The aim of the remedy I proposed, which Ikano thinks is unfair, was to put Mrs O in the position she'd be in now if what she was told was true: her feed-in-tariff ('FIT') income and the savings generated by the system would be enough to cover her loan payments over the term of the loan, and then she'd have the benefits of the solar panel system after the loan was repaid.

Usually, the remedy for misrepresentation is rescission – the contract is cancelled and unwound – and this is what Mrs O initially wanted.

If I'd prescribed this remedy, Ikano would have had to pay to remove the solar panel system (and repair any damage), cancel the contract, refund any loan payments Mrs O has made with simple interest at a rate of 8% per year (though I'd have made some allowance for the benefits she's received), and remove any reference to the loan from the relevant credit reference agencies. As Mrs O's complaint wasn't about the solar panel system but rather that she was told it would be self-funding, I didn't think this was necessary. I still don't. The remedy I outlined in my provisional decision ensures Mrs O doesn't lose out because of the misrepresentation. And it means Ikano doesn't incur the significant cost of removing the system and refunding everything Mrs O's paid. I'm therefore satisfied it is the fairest and most reasonable outcome for all concerned.

my final decision

For the reasons I've explained above and in my provisional decision, I uphold Mrs O's complaint against Ikano Bank AB (publ). Ikano Bank AN (publ) should:

1. let Mrs O keep the solar panel system;
2. assume that the total achievable benefit of the system is £7,204.53;
3. refund the difference between the amount Mrs O has paid each month and the amount she would have paid each month if the total amount payable over the term of the loan, including interest, had been the same as the total achievable benefit over the same period;
4. add simple interest (at 8% per year) to each overpayment from the date of the overpayment until the date Mrs O receives her refund; †
5. adjust the amount outstanding on Mrs O's loan so that the amount she owes now is the same as it would have been if the total amount payable over the term of the loan, including interest, had been the same as the total achievable benefit, but keep her monthly contractual payments the same as they are now;
6. pay Mrs O £100 for the trouble and upset caused.

† If Ikano thinks it's required by HM Revenue & Customs (HMRC) to deduct income tax from this interest payment, it should tell Mrs O how much it's deducted. It should also give her a certificate showing how much it's deducted if she asks for one so that she can claim it back from HMRC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 6 January 2020.

Christopher Reeves
ombudsman

my provisional decision

complaint

Mrs O thinks Ikano Bank AB (publ) ('Ikano') has unfairly rejected her claim under section 75 of the Consumer Credit Act 1974 ('CCA').

background

In 2015, Mrs O entered into a contract with a company called [Business 1] for it to supply and install a solar photovoltaic ('solar panel') system on her roof. She borrowed £7,670 from Ikano to pay for it.

In 2016, Mrs O made a claim to Ikano under section 75 of the CCA. She says the benefits of the solar panel system were misrepresented by [Business 1]. Specifically, she says the salesman told her the loan payments would be off-set by her feed-in-tariff ('FIT') income and the savings generated by the system, so she'd only have to pay a £100 deposit. But after the system was installed and working, Mrs O realised this wasn't the case and her monthly outgoings had increased.

Initially, Ikano said it didn't think [Business 1] had misrepresented the benefits of the system. It said the point of sale documents show that the system would cost more than the income and savings over the term of the loan. But it agreed that the savings have been lower than estimated, and offered Mrs O £750 as a gesture of goodwill.

Unhappy with Ikano's response, Mrs O referred her complaint to our service.

One of our investigators looked into what had happened and recommended Mrs O's complaint should be upheld. He concluded that [Business 1] had misrepresented the benefits of the system, and this misrepresentation induced Mrs O to enter into the contract with [Business 1]. To put things right, our investigator recommended Ikano:

1. allow Mrs O to keep the solar panel system;
2. work out the potential savings Mrs O will make and the income she'll get from the solar panel system over the 10 year term of the loan and adjust the loan so that Mrs O pays no more than that;
3. pay simple interest (at 8% per year) on any extra Mrs O has paid from the date of each payment until she gets her money back, deducting income tax if required by law;
4. pay Mrs O £100 for the trouble and upset caused.

As there's more than one way to 'adjust the loan', our investigator recommended Ikano give Mrs O a choice between:

- (A) using all her payments to date to reduce the loan, and keeping her scheduled monthly payments the same so that the revised loan amount is repaid early;
- (B) using all her payments to date to reduce the loan, and reducing her scheduled monthly payments so that the loan term stays the same;
- (C) receiving a refund of the extra she's paid so far, which would be the difference between the amount she's paid each month and the amount she would have paid if she'd borrowed the revised loan amount over 10 years, and keeping her scheduled monthly payments the same so that the revised loan amount is repaid early;
- (D) receiving a refund of the extra she's paid so far (as in (C) above), and reducing her scheduled monthly payments so that the loan term stays the same.

Ikano accepted the investigator's recommendation and offered to do (A).

Mrs O, who is represented, wants it to do (C).

Ikano says it would be very hard for it to do anything other than (A) because of system constraints. And, disappointingly, it now says it disagrees with the conclusions and recommendations of the investigator.

my provisional findings

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 is, in my opinion, fair and reasonable in all the circumstances of the case, I'm required by DISP 3.6.4 of the Financial Conduct Authority (FCA) Handbook to take into account:

'(1) relevant:

- (a) law and regulations;
- (b) regulators' rules, guidance and standards;
- (c) codes of practice; and

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.'

Where the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

Was Mrs O misled?

Section 75 of the CCA protects consumers who buy goods and services on credit. It says the finance provider (Ikano) is liable for any misrepresentation or breach of contract by the supplier ([Business 1]). Section 56 of the CCA is also relevant. This says that any negotiations between Mrs O and [Business 1], as the supplier, are deemed to have been conducted by [Business 1] as agent of Ikano.

I've carefully considered the available evidence in this case, which includes Mrs O's testimony, the paperwork completed and/or supplied by [Business 1], and some [Business 1] marketing material. It also includes the findings of a Renewable Energy Consumer Code ('RECC') non-compliance panel when it investigated [Business 1], and a report by Citizens Advice about [Business 1].

I agree with our investigator that it is more likely than not that Mrs O was told the solar panel system would pay for itself over the term of the loan.

First, Mrs O has been consistent throughout, and I find her testimony plausible and persuasive. I've seen nothing which suggests she had any interest in solar panels before she was 'cold called' by [Business 1]. In 2015, Mrs O was 59 years old. She told us she had no money to spare and hoped to retire soon. I find it hard to believe she would have borrowed money to pay for solar panels unless she was told the amount she'd earn and save would match or exceed the amount she'd have to pay.

Second, other evidence supports what Mrs O says. A [Business 1] 'flyer' describes its solar panel systems as 'self funding' (sic), in bold, capital letters. In large letters on the other side of the page, it says: 'Never spend a penny' and 'Subsidies cover the full cost'. It even explains what it means by 'self funding':

'The Feed in Tariff is a simple scheme which means when the Sun shines, the Government pay you for producing electricity!
In combination, finance companies are offering loans for the systems which can be serviced in full by the subsidies – meaning you are never out of pocket!
Save the environment and make thousands of pounds!'

I think this flyer is indicative of the way [Business 1] presented solar panels to its customers. And the Citizens Advice report and the findings of the RECC non-compliance panel are all consistent with what Mrs O has told us.

In its most recent submission, Ikano says the flyer I've referred to above doesn't explicitly say the benefits of the system will cover the cost of the loan over the term of the loan. Ikano says the benefits of the system will probably cover the cost of the loan over the life of the system. It says our investigator simply assumed Mrs O believed the former rather than the latter. And he didn't consider the lifetime benefits of the system when he upheld her complaint.

I'm surprised and disappointed by this late submission. First, the words 'never spend a penny' and 'you are never out of pocket' are unambiguous. I find it hard to believe Ikano really thinks a consumer could or should have taken those words to mean 'the lifetime benefits of the system may eventually exceed the significant sum of money you'll pay during the first ten years'. In this case, Mrs O is already out of pocket. And she will be, increasingly and significantly, over the term of the loan. Second, and more importantly, Mrs O's testimony is unambiguous. In her own words, she says:

'We asked [the salesman] about the finance and were told that the monthly loan amount would be covered by the money received back from the FIT. We did not have the money to spare and we would certainly not have agreed a loan if we thought this would not happen.'

For me, Mrs O's testimony alone, in context and in light of her circumstances at the time, is enough to uphold this complaint. To be clear, I have not said and I do not think Mrs O necessarily saw the flyer I've referred to above. Instead, I've referred to it, as well as the Citizens Advice report and the findings of the RECC non-compliance panel, because they tell me something about the way [Business 1] sold solar panels generally. And this evidence is, as I've explained above, consistent with what Mrs O has said. Finally, the lifetime benefits of the system are irrelevant. The misrepresentation was that the system would pay for itself over the term of the loan.

I have, of course, looked at the paperwork completed and/or supplied by [Business 1]. I don't think it is very clear, let alone clear enough to overcome the misrepresentation. A document provided by [Business 1] shows the 'estimated' benefits, but it doesn't show the cost for comparison. What's more, in this case, the document is dated 2 February 2015. The loan agreement shows the monthly cost of the loan. But this is dated 7 May 2015, which is more than two months after the solar panels were installed. To claim, as Ikano initially did, that it should have been clear to Mrs O that she'd have to pay more than she'd save and earn is, in these circumstances, unreasonable.

According to [Business 1]'s estimate, Mrs O could expect to save and earn just over £700 in the first year, whereas her loan repayments were about £1,200 a year. So she was likely to be out of pocket by about £500 in the first year, and every year for the term of the loan. In short, based on [Business 1]'s own estimate, the solar panels weren't 'self-funding' over the term of the loan, which means it misrepresented the benefits to Mrs O.

I think Mrs O only agreed to the installation of the solar panel system because she was told it would pay for itself. If she'd know otherwise, I don't think she would have agreed to it.

Fair compensation

To put things right, our investigator said Ikano should effectively make the solar panel system 'self-funding'. He explained how Ikano could work out the total achievable benefit of the system over the term of the loan, and what underlying assumptions it should make. As neither Ikano nor Mrs O has queried the fairness or accuracy of those underlying assumptions, I don't think it's necessary to repeat the rationale for each. Suffice it to say that I too think they're fair. I've summarised them below.

- The system generated 3,087.12 kWh in year one.
- Ikano should assume the efficiency of the system will reduce by 0.5% each year.

- Ikano should use a FIT rate of 13.88p/kWh for generated electricity and 4.77p/kWh for exported electricity.
- Ikano should use a unit rate of 12.77p to work out how much Mrs O will save by using the electricity generated.
- Ikano should assume that Mrs O will use 37% of the energy generated by the system.
- To work out how much FIT rates may increase over time, Ikano should assume a retail price index (RPI) rate of 2.5%. And it should assume electricity prices will increase by 4% per year.

Ikano has worked out that the total achievable benefit of the system over the term of the loan will be £7,805.20. I don't think this is quite right.

Ikano has sent us a breakdown which shows how it has calculated this number. And it looks like Ikano has assumed Mrs O will use 50% of the energy generated by the system instead of 37%. When I adjust its calculations accordingly, the total achievable benefit of the system over the term of the loan is £7,204.53.

Ikano says Mrs O has paid £4,883.83 so far. After it accepted the investigator's recommendation and before it changed its mind, it said it wanted her to continue to pay £99.67 per month (her contractual monthly payment) until she has paid a sum equal to the total achievable benefit. It said it would then write-off what was left. This is option (A) above.

Mrs O wants Ikano to work out how much she'd have paid each month if the total payable over the term of the loan, including interest, had been the same as the total achievable benefit over the term of the loan. She wants it to refund the extra she's paid each month so far (with simple interest). But she's willing to continue making her current monthly payments so that she'll pay a sum equal to the total achievable benefit before the end of her loan term.

Ikano said the outcome will be the same either way, and it would be very hard for it to do anything other than option (A). But the outcome won't be the same either way. And Mrs O was told the system would pay for itself over the term of the loan and it doesn't. I think it's only fair that she now gets to choose which of the four options works best for her. And Ikano will have to find a way to make it work.

Finally, our investigator recommended Ikano pay Mrs O £100 for the trouble and upset caused. It agreed to do so, and I think that's a fair amount in the circumstances.

my provisional decision

My provisional decision is that this complaint should be upheld. So unless the comments and evidence I get by 19 November 2019 change my mind, I will tell Ikano Bank AB (publ) to:

7. let Mrs O keep the solar panel system;
8. assume that the total achievable benefit of the system is £7,204.53;
9. refund the difference between the amount Mrs O has paid each month and the amount she would have paid each month if the total amount payable over the term of the loan, including interest, had been the same as the total achievable benefit over the same period;
10. add simple interest (at 8% per year) to each overpayment from the date of the overpayment until the date Mrs O receives her refund;[†]
11. adjust the amount outstanding on Mrs O's loan so that the amount she owes now is the same as it would have been if the total amount payable over the term of the loan, including interest, had been the same as the total achievable benefit, but keep her monthly contractual payments the same as they are now;
12. pay Mrs O £100 for the trouble and upset caused.

† If Ikano thinks it's required by HM Revenue & Customs (HMRC) to deduct income tax from this interest payment, it should tell Mrs O how much it's deducted. It should also give her a certificate showing how much it's deducted if she asks for one so that she can claim it back from HMRC.

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