

The complaint

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

What happened

In November 2019 Mr S entered into a fixed sum loan agreement with Ikano to pay for a £12,500 solar panel system from a supplier I'll call "SF". Mr S made a £100 deposit. The total amount payable under the agreement was £15,957.54 and it was due to be paid back with 119 monthly repayments of £132.99 and a final repayment of £131.73.

The supply contract was for the installation of 10 solar panels and Mr S signed a satisfaction note in December 2019. Mr S says he wasn't interested in buying solar panels but saw an advert on social media advertising them. The advert said the solar panels would pay for themselves, and so he booked an appointment with SF to discuss. Mr S says SF told him the solar panels would self-fund and pay him some extra income. He said the salesperson told him each month he'd make enough energy to run his house. He said he was told he could use this sum to pay off the agreement and receive some extra income.

Mr S says SF showed him a presentation of how solar panels work and the income he'd receive. He says SF showed him a spreadsheet setting it out as well. Mr S says SF reassured him and read testimonials from other customers. He says SF told him he'd need to buy a battery as part of the package and that any extra energy generated would be stored so he wouldn't need to use energy from the grid. Mr S says he was told if there was ever a grid shutdown, he'd still have power.

Mr S says the whole consultation was based on lies. He said shortly after the system was installed, he contacted SF because he was unhappy with the results, and he was told to contact the energy supplier. He says he was passed back and forth between the parties and eventually he got fed up. He said he put in various complaints initially and never received money into his bank account. He says he only made savings of between £15 and £20 per month from the solar panels. He had to pay his energy bills as well as the repayment to Ikano. He said he struggled to pay and had to ask for forbearance during Covid-19. He felt like he had no choice but to pay the agreement so his credit file wasn't impacted.

Mr S put in a claim with Ikano in April 2022 complaining in summary:

- SF misled him about how much he'd earn and save from the solar panels.
- A suitable creditworthiness assessment wasn't carried out.
- There were mistakes made and Mr S was pressured to take out the agreement.
- SF misled him that his property value would increase.
- SF misled him the panels would be maintenance free with at least 25 years life

expectancy.

Mr S said he thought he had claims for breach of contract, misrepresentation and in relation to an unfair relationship.

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 S 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 S had rights to withdraw if he wasn't happy. It said the savings Mr S 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.

One of our investigators looked into things and broadly said she didn't think Mr S would have entered into the agreement had it not been for misleading information given to him by SF. She thought he'd been induced into the agreement by misrepresentation from SF and that a court would likely find the relationship was unfair. The investigator thought that, to resolve the complaint, Ikano should recalculate the loan based on known and assumed savings and income so that Mr S pays no more than that for the solar panels. She said Mr S should keep the system and set out some options in order for that to happen. The option Mr S said he'd likely accept involved having overpayments returned to him and he continues making his current loan repayments. She also thought Ikano should pay Mr S £100 for not looking into the unfair relationship claim.

Ikano didn't accept the view. It said there was insufficient evidence of misrepresentation. It said it had supplied copies of example paperwork it thinks Mr S would have been left with, and that it's not fair to rely solely on Mr S's verbal testimony.

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.

Ikano hasn't raised any objections concerning the Financial Ombudsman's power to consider this complaint. Seeing as though the agreement was entered into in 2019; the claim and complaint was raised in 2022; and it was referred to our service in 2022, I agree it has been brought within the relevant timescales.

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

Mr S has mainly referred to the alleged unfair relationship when setting out his complaint. And our investigator focussed on this. But I'm also mindful he's alleged breach of contract and misrepresentation, among some other issues. In this case, section 75 of the CCA makes Ikano responsible for a breach of contract or misrepresentation by SF under certain conditions. I think the necessary relationships between the parties exists and the claim is within the relevant financial limits.

The negotiations

Ikano hasn't supplied evidence of what was (or wasn't) discussed at the point of sale. It's also not been able to supply copies of the paperwork Mr S was left with. Although it's been able to supply examples of the sort of paperwork it says Mr S was likely left with. The problem I have is that Mr S has consistently said the only paperwork from the point of sale that was left with him was the finance agreement and an energy certificate. I've seen some documents signed by Mr S setting out potential savings, but these were signed after he'd entered into the agreement. I've not seen enough to demonstrate Mr S 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.

I've not seen anything to indicate Mr S had an interest in purchasing a solar panel system before he contacted SF off the back of an advert. Mr S has said he only agreed to the purchase because SF told him the system would pay for itself. I'm mindful that it would be difficult to understand why, in this particular case, Mr S would have agreed to install a solar panel system if his monthly outgoings would increase significantly.

I've thought about Mr S's testimony. I've set out in the background what he told us he was led to believe. And I also note this is supported by complaints he raised with the energy supplier in 2020 shortly after the system was installed because he wasn't receiving the savings he says he was led to believe.

On balance I find Mr S'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 £1,500 per year. I've not seen anything to suggest he's achieved anywhere near this benefit. I therefore find the statements 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, or indeed offered Mr S any sort of extra income.

Taking into account what I've said above, I think it likely SF gave Mr S a false and misleading impression of the self-funding nature of the solar panel system. Section 56 of the CCA deems SF the agent of Ikano when carrying out antecedent negotiations. And section 75 makes Ikano responsible for breach of contract and misrepresentation. I consider SF's misleading presentation went to an important aspect of the transaction for the system, namely the benefits which Mr S was expected to receive by agreeing to installation of the system. I consider that SF'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 S went into the transaction. Either way, on balance, I think SF's assurances were misleading and false, undermining the purpose of the transaction from Mr S's point of view.

Taking into account everything I've said above, I think there'd be grounds to say Ikano is liable for a breach of contract or misrepresentation. And that a court would likely find the relationship between Mr S and Ikano to have been unfair.

Fair Compensation

In all the circumstances I consider that the fair compensation should aim to remedy the unfairness of Mr S and Ikano's relationship arising out of SF's misleading and false assurances as to the self-funding nature of the solar panel system. I require Ikano to repay Mr S a sum that corresponds to the outcome he could reasonably have expected as a result of SF's assurances. That is, that Mr S's loan repayments should amount to no more than the

financial benefits he receives for the duration of the loan agreement. I think Ikano should recalculate the original fixed sum loan based on the known and assumed savings and income to Mr S from the solar panels.

By recalculating the loan in this way, Mr S's repayments to the fixed sum loan would reduce, meaning he's paid more each month than he should have done resulting in an overpayment balance. As Mr S has been deprived of the overpayments Ikano should add 8% per year simple interest* from the date of each overpayment to the date of settlement.

Given the findings made and the broad acceptance from Mr S of the outcome, which is in line with what our investigator recommended, I don't think I need to also deal with any of the other complaint points Mr S raised.

I therefore agree with our investigator that Ikano should let Mr S have the following options as to how he'd like his overpayments to be used:

- A. the overpayments are used to reduce the outstanding balance of the loan and he continues to make his current monthly payment resulting in the loan finishing early,
- B. the overpayments are used to reduce the outstanding balance of the loan and he pays a new monthly payment until the end of the loan term,
- C. the overpayments are returned to Mr S, and he continues to make his current monthly payment resulting in his loan finishing early, or
- D. the overpayments are returned to Mr S, and he pays a new monthly payment until the end of the loan term.

If Mr S wishes to accept the decision, he should indicate on the acceptance form which option he wishes to accept.

I also agree that Ikano's refusal to consider all aspects of the claim caused Mr S some further inconvenience. And I think the £100 compensation recommended by our investigator is broadly a fair way to recognise that.

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

My final decision

My final decision is that I uphold this complaint and direct Ikano Bank AB (publ) to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 February 2024.

Simon Wingfield
Ombudsman