

## The complaint

Mrs H has complained about the way Ikano Bank AB (publ) responded to claims she'd made under the Consumer Credit Act 1974 (the "CCA") and her request for money back.

Mrs H has been represented in bringing her complaint but, to keep things simple, I'll mainly refer to Mrs H throughout.

## What happened

In May 2015 Mrs H entered into a fixed sum loan agreement with Ikano to pay for a £8,999 solar panel system ("the system") from a supplier I'll call "S". The total amount payable under the agreement was £14,030.86 and it was due to be paid back with 120 monthly repayments of around £115. I understand Mrs H settled the agreement early in 2020.

Ikano said Mrs H contacted it in April 2023 to say S told her the feed in tariff (FIT) payments she'd receive would cover the cost of the loan, but this turned out to be false.

Ikano responded to the claim and when considering it under section 75 ("s.75") of the CCA it thought it had been brought out of time. Mrs H decided to refer a complaint about the handling of her claim to the Financial Ombudsman.

Ikano sent a final response letter in July 2023 and reiterated it thought its answer to the claim was fair.

One of our investigators spoke to Mrs H and she explained S told her the FIT payments would generate enough to cover the loan and that there was a cashback scheme that could be used when the panels couldn't generate enough revenue. She said there was some pressure for her to conclude the sale because the FIT payments were due to reduce. She said she was misled the FIT payments would be paid for the life of the system. She said she didn't raise the claim sooner because the property with the system on was rented out and she thought the tenants were benefitting.

Our investigator looked into things and thought Ikano's response to the s.75 claim was broadly fair. He considered that the alleged misrepresentation claim could have created an unfair relationship between Mrs H and Ikano under section 140A ("s.140A") of the CCA and that we could consider that under our rules. But he didn't ultimately conclude Ikano needed to take any action. He didn't think there was sufficient evidence to show S misrepresented the system taking into account the point of sale paperwork.

Mrs H didn't agree. She said similar complaints to hers had been upheld, and that other customers received better terms for FIT payments. She also highlighted the cashback that was missing.

Ikano said it didn't disagree with the outcome but it questioned our jurisdiction to consider aspects of the complaint. Our investigator responded setting out why he thought he could consider the broad complaint holistically. Ikano hasn't responded saying it disagreed.

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.

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. Mrs H has complained Ikano unfairly declined her claim. She said she's lost out as a result of misrepresentations by S and the impact of this over the course of her relationship with Ikano. So she's paying more to Ikano than she says she was led to believe she'd need to. Mrs H bought the system using a fixed sum loan agreement. I'm satisfied we can consider complaints such as Mrs H's relating to these sorts of regulated consumer credit agreements.

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. Ikano has said the misrepresentation claim was brought outside the time limits set out in the Limitation Act 1980 ("the LA"). Mrs H raised her claim more than six years after the date on which the cause of action accrued. The alleged misrepresentation happened in 2015 and the claim wasn't raised until 2023. So I think Ikano had grounds to fairly decline the s.75 claim. I therefore don't uphold this aspect of the complaint.

However, 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 and I've thought about the time limits that apply to our service's jurisdiction. One of the events here relates to Ikano's participation, for so long as the credit relationship continues, in a relationship with Mrs H that could be unfair. I understand the relationship ended in 2020. Mrs H raised her claim and complaint and referred it to the Financial Ombudsman in 2023. So I think a complaint about an alleged unfair relationship has been brought in time for the purposes of our jurisdiction.

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 a complaint about the 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 Mrs H.

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?*

Mrs H says she was verbally misled that the system would effectively pay for itself within the loan term through the FIT income. So I've taken account of what Mrs H says she 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 Mrs H 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.

Mrs H supplied several other point of sale documents, some of which were signed by her. Our investigator highlighted a booklet from S setting out the estimated first year benefits the customer could expect to receive through FIT income, bill savings and export income. It sets out the 1<sup>st</sup> year benefits, potential returns and cost of the installation. Our investigator thought that this sort of document would have been key and formed a central part of the sales discussion. And he said the document wouldn't have indicated a return through FIT or savings would be sufficient to repay the loan annually or over the period it was due to run.

Mrs H's representative explained he appreciated the information supplied didn't say the panels would be self-funding, but he highlighted the information supplied was the same for another case he had about a solar panel complaint, involving the same businesses. He said he thought it was strange that other customers with systems enjoyed a lifetime of FIT payments but Mrs H's was for 10 years. He also said the contracts were signed at the same time and he and Mrs H were reassured by S that cashback discount cards would cover any shortfall.

As I'm sure Mrs H can appreciate, we need to consider each complaint on its own individual merits. Mrs H hasn't disputed receiving the sort of paperwork that set out the estimated benefits of the system. I would have expected her to query things straight away had the form she received not been in line with what S's representative had told her verbally. Based on the size of the system Mrs H had installed, the benefit through FIT was not going to be close to covering the cost of the loan payments, which were around £115 monthly and nearly £1,400 annually. Given what Mrs H has supplied, I don't think the most likely thing to have happened is that S told her the FIT payments would cover the cost of the loan. And if it had done that, I'd have expected her to query it straight away. Mrs H said the property was rented out but, while I'm not certain, presumably she received the FIT payments herself and also needed to make the loan repayments, so it's not clear why the issue wasn't raised sooner.

Mrs H also mentioned she was reassured about a cashback scheme run by S. She's provided a card that includes unique codes to be able to use it. The back of the card seems to indicate Mrs H needed to register her bank card to collect cashback. I've not seen sufficient evidence that this formed part of the negotiations about the financial benefits of the system or that it would lead to income to cover the shortfall between the benefits of the system against the loan costs.

I've also seen in Mrs H's complaint letter she mentioned she was unhappy about promises to do with the performance of the system. But having run some calculations myself, it seems as though the system is slightly overperforming compared to the estimate on the MCS certificate. So I've not seen enough to determine S misled her about the expected performance either.

Mrs H also mentioned other customers received FIT for longer than her. As far as I'm aware, customers will receive FIT for the 20-year period of the scheme. I've not been supplied sufficient evidence Mrs H was misled about this either.

Overall and on balance, while I'm sorry to hear Mrs H is unhappy, 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.

**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 Mrs H to accept or reject my decision before 10 January 2025.

Simon Wingfield  
**Ombudsman**