DRN-4522397

The complaint

Mrs K complains that Ikano Bank AB (publ) ("Ikano"), has rejected the claim she made under section 140 of the Consumer Credit Act 1974 ("the Act") in relation to a solar panel system she says was misrepresented to her by the supplier.

Mrs K is represented by a claims management company ("the CMC").

What happened

Mrs K purchased a solar panel system ("the system") for her home in 2015 and financed it through a 10-year fixed sum loan agreement with Ikano. The system was subsequently installed. Mrs K alleges that the installer misled her into believing that the panels would be self-funding, which they weren't. She says this caused her relationship with Ikano to be unfair on her.

Ikano didn't agree the system had been misrepresented to Mrs K or that its relationship with her was unfair.

One of our investigators looked into what had happened. Having considered all the information and evidence provided, our investigator felt the complaint should be upheld and that the system was likely misrepresented to Mrs K, making its relationship with her unfair. He suggested Ikano put things right by ensuring Ikano charged Mrs K no more than the benefit she would likely receive over the term of the loan.

Ikano didn't agree to our investigators view of the complaint for the following reasons:

- Ikano says the system was not sold as self-funding and the sales contract would have made that clear. While Ikano couldn't provide the sales contract related to Mrs K sale, neither could Mrs K. But it did however submit sample documents that it says were standard documents given to consumers by this supplier, and this shows it usually made the costs and benefit clear in the sales contract.
- Ikano pointed out that Mrs K didn't complain to the supplier directly at all and didn't complain to Ikano for 6 years, despite being in contact with it in 2017 to redeem the loan.
- Other than the consumers testimony, there was no evidence the system had been misrepresented.

Our investigator wasn't persuaded by Ikano's submissions explaining that Mrs K had been given one generation figure in her estimated returns document and another in her MCS certificate post installation. He felt the information given wasn't clear, and Mrs K would have been reliant on what she was told. Ikano still didn't agree.

As an agreement couldn't be reached, the case was passed to me.

In my provisional decision of 1 December 2023, I set out why I was minded to upholding the complaint in part. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Neither Ikano nor Mrs K made any further comments.

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.

In my provisional decision I explained the following:

Our investigator has explained why we have jurisdiction to consider this complaint and as neither party has disputed this, I don't need to set this out again in this decision.

Ikano is familiar with all the rules, regulations and good industry practice we consider when looking at complaints of this type, and indeed our well-established approach. So, I also don't consider it necessary to set all of that out in this decision.

Neither party has been able to provide all the documents related to the sale so if there is a dispute about what happened, I must decide on the balance of probabilities - what I think most likely happened, given the evidence that is available and the wider surrounding circumstances.

Documents submitted

Both parties have submitted a copy of the credit agreement Mrs K signed at the time of sale and this clearly set out the costs. This was signed by Mrs K on 13 April 2015.

Mrs K also submitted a document headed MCS Standard Performance Calculation which sets out the estimated benefit Mrs K could expect to receive from the system. The date on the copy submitted appears to have been crossed out – but in Mrs K's witness testimony she accepts she was given a document setting out the returns.

Mrs K signed the credit agreement and maintained the loan payments for years before redeeming it early. While I cannot see the date or signature on the estimated returns document, Mrs K recalled it during her witness testimony some 6 years after the sale and submitted it as part of her submissions. So, I'm satisfied that Mrs K was provided with the sales documents mentioned above, and she would've seen these at the time of sale.

Ikano has provided a sample sales contract which does appear to set out the estimated returns and the price of the system, and while this doesn't relate to this specific sale, it does give us an indication as to this supplier's sales practices.

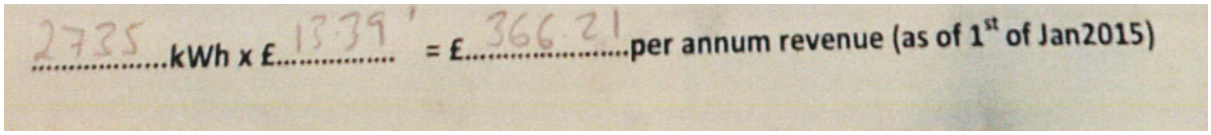
The cost of the system

The credit agreement sets out the amount being borrowed (£9,450), the interest to be charged (£5,280.96), total amount payable (£14,730.96), the term of the loan (120 months i.e. 10 years) and the contractual monthly repayments (£122.76).

I'm satisfied the credit agreement made it clear that although the cost of the system was £9,450, it would cost Mrs K more than this as she had decided to pay for it with an interest-bearing loan. I also think the term of the loan, monthly payments, and total amount repayable was clearly set out.

Self-funding

The estimated returns document sets out that Mrs K's annual revenue would be £366.21.



Bearing in mind Mrs K's monhtly payment was around £122 a month, I think its apparent that 12 payments of £122, is significantly more than £366. Additionally, I think its unlikely that Mrs K would agree to such a substantial purchase with finance without considering the most basic details of the loan, such as the term of the loan as well as the total amount repayable. And to repay £14,730.96 over 10 years, I think its clear Mrs K would need around £1,473 annually to meet the repayments on the loan. And an annual revenue of £366 falls significantly short of that.

So considering I'm satisfied Mrs K was shown both the credit agreement and the estimated benefits during the sale, I think its clear the system wouldn't be self-funding in the way Mrs K says it would be, at least not without an explanation as to how such a considerable shortfall would be made up. Her testimony doesn't explain any further information about this being mentioned during the sale.

If Mrs K had been told something different, on being given these documents, I would have expected her to have questioned what she had been told. I've seen no evidence that she did, so I think that suggests that the documents most likely did not contradict Mrs K's understanding at that time.

I've also gone on to consider the wider circumstances of this case. It seems the supplier was trading for many years post installation. Had Mrs K been disappointed with the benefits she was receiving because it wasn't covering the loan costs as she says she expected, I would have expected her to have raised that with the supplier while it was still trading, and I've seen no evidence that she did. Additionally, Mrs K redeemed this loan in 2017, and didn't raise any concerns over the sale or benefit she was receiving at that time. Given the substantial amounts she paid, I would have again expected her to have mentioned these concerns to Ikano at the time.

I also understand Mrs K responded to an advert seeking out the solar panel system – indicating she was interested in installing the system to some degree rather than the supplier cold calling her or selling it to her during a door-to-door sales exercise. While I've thought about the CMC's concerns about Mrs K's age and the long-term nature of the system, people buy systems like these for an array of reasons (to produce green energy, to improve the energy efficiency of their homes, to increase the value of their homes, for their families to benefit). So, I don't think that the long-term nature of the product means that Mrs K wouldn't have bought the system.

I do accept Mrs K does appear to have been given a different generation estimate in the estimated returns document than in the MCS certificate that was given to her after the installation. However, this doesn't change the fact that the sales documents overall do not suggest the system would produce enough benefit to make the system self-funding. Being given the MCS certificate post installation doesn't change that it's unlikely that when she agreed to the purchase, the system was presented to her as being self-funding as she now claims.

While I've carefully considered Mrs K's testimony, I find the documents from the time of sale to be more persuasive in terms of what information she was likely given at the time of sale. So, on balance, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint.

Other issues

I've thought about the CMC's concerns about high pressure sales tactics being utilised and Mrs K being unaware of her cancellation rights. However, pressure can be subjective, and I haven't heard enough detail to persuade me Mrs K was pressured into buying the system. And the cancellation rights are set out in her credit agreement.

Mrs K has also claimed she was sold a voltage optimiser (VO) which was never given to her. As explained above, I do not have a full copy of the sales contract as neither party has been able to provide it. However, the credit agreement only refers to the solar panel system in the "description of goods" section. And the invoice given to Mrs K after installation, also doesn't mention the VO. So, it doesn't look like the finance agreement included any other product other than the solar panel system which was installed as agreed. Overall, I don't have sufficient evidence here to say that the provision of a VO was included within the costs, or that there has been a breach of contract in relation to the VO that Ikano should now be held responsible for.

Underperformance

I've gone on to consider the performance of the system and whether this is in line with the contract between P and Mrs K. The MCS certificate sets out that the system is expected to produce 2188 kWh a year. The estimated returns document shows the system was expected to produce 2735 kWh per year. And the benefits shown in the estimated returns document were calculated based on that level of generation.

I have looked at Mrs K's meter reading, and can see that the system, on average, has generated 1649.88 kWh per year. This is significantly less than estimated by P at the point of sale, as well as the MCS certificate and well outside of the tolerance levels we normally agree is reasonable. So, I'm satisfied that the system isn't performing as expected.

It is unclear why the system has underperformed. The CMC raised this issue in its letter of claim and the loss assessment attachment sent to Ikano in 2021. It highlighted the system has generated significantly less than was estimated at the point of sale. So, I think Ikano has had enough time to look into this to see if the system is faulty or in need of repair – and I've seen no evidence that it has done so.

Based on the evidence available to me, I think that it's more likely P misrepresented the system's ability to generate electricity, and as a result the benefits it would produce relative to the cost of the loan. I think this misrepresentation induced Mrs K into entering into the contract and its likely she bought the system based on the system's ability to generate energy in line with the contract. Because of this, I think that Ikano didn't treat Mrs K fairly and she has lost out because of this. And this means that Ikano should put things right.

As I think the system's ability to generate energy has been misrepresented to Mrs K, I think a court could likely conclude there existed an unfair relationship under section 140 of the Consumer Credit Act 1974. As Mrs K has lost out because of what the supplier did wrong, I think Ikano should put things right.

Summary

Having carefully considered the evidence provided by all parties in this complaint, I'm satisfied that the system wasn't mis-represented to Mrs K on the basis that it would be immediately self-funding.

However, I think it's more likely that the supplier did misrepresent the system's ability to generate energy, and the benefits were then estimated on that basis. I think it's likely that Mrs K bought the system on the basis that the system would generate energy in line with the sales documents and was expecting benefits that correspond with that level of generation. The system has not performed in line with that. I'm therefore satisfied that Mrs K has suffered a loss because of this and Ikano should therefore put this right.

Putting things right

In this case, I think fair compensation is trying to make sure that Mrs K does not suffer a financial loss, which in my view would mean that the solar panel system should generate roughly what was promised via the sales paperwork. The MCS certificate has a lower generation figure (2188 kWh) than the estimated returns (2735 kWh). But Mrs K would have bought the system based on the estimated returns document, which was given to her during the sales process, so I think its fair for redress to be worked out based on that generation figure which is 2735 kWh annually.

So, I think to put things right Ikano should:

> *a) calculate the difference between what the panels have generated as income (through FIT and savings) for Mrs K and what the estimated returns set out as being the annual revenue.*
>
> *b) add 8% simple interest to that amount and pay the total to Mrs K*

The finance agreement in question was due to end in 2025. To ensure that Mrs K doesn't lose out going forward, Ikano should then:

> *c) calculate the average annual underperformance percentage so far, and assume that the panels will continue to underperform at that rate through to the original conclusion date of the finance agreement*
>
> *d) recalculate the annual revenue for each year going forward until the original conclusion date of the finance agreement, having applied the percentage reduction identified in c) above*
>
> *e) pay Mrs K the difference between the revised amounts calculated in d) above and the annual revenue set out in the sales paperwork.*

I'm satisfied that there was sufficient information available at the time that Mrs K first contacted Ikano that means the claim should have been upheld. I intend to direct Ikano to pay £100 compensation for the trouble and upset caused.

As explained above, neither Ikano nor Mrs K have made any additional comments in response to my provisional decision. So, in the absence of any new points for me to consider, I find no reason to depart from my original findings as set out in my provisional decision. Overall, having again carefully considered the evidence provided by all parties in this complaint, I'm still satisfied that the system wasn't mis-represented to Mrs K on the basis that it would be immediately self-funding.

However, I do think it's more likely that the supplier did misrepresent the system's ability to generate energy, and the benefits were then estimated on that basis. I think it's likely that Mrs K bought the system on the basis that the system would generate energy in line with the sales documents and was expecting benefits that correspond with that level of generation.

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e) pay Mrs K the difference between the revised amounts calculated in d) above and the annual revenue set out in the sales paperwork.

I'm satisfied that there was sufficient information available at the time that Mrs K first contacted Ikano that means the claim should have been upheld. I direct Ikano pay £100 compensation for the trouble and upset caused.

My final decision

For the reasons explained, I uphold this complaint. Ikano Bank AB (publ) should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 16 January 2024.
Asma Begum
Ombudsman