

The complaint

Mr and Mrs H complain that Ikano Bank AB (publ) rejected a claim they made under sections 75 and 140 of the Consumer Credit Act 1974 ("the Act").

What happened

In 2015, Mr and Mrs H purchased a solar panel system ("the system") from a supplier. They paid for the system using a fixed sum loan agreement from Ikano – the loan agreement was between Ikano and Mrs H only. In 2017, Mr and Mrs H moved out of the property, so ceased to benefit from any savings. In 2018, Mr and Mrs H sold the property along with the rights to any income from the system but did not pay off the loan. The supplier of the system was dissolved in 2019. Mrs H continue to make the required loan repayments.

In 2021, a claims management company made a claim to Ikano on behalf of Mr and Mrs H. It alleged that the system was misrepresented to Mr and Mrs H as being self-funding, in that their outgoings would reduce through the income and savings exceeding the monthly loan repayments.

Ikano rejected the claim, so Mr and Mrs H made a complaint about this. Ikano rejected the complaint, so Mr and Mrs H asked the Financial Ombudsman Service to look into what had happened.

Our investigator looked at the complaint with regard to section 140, since under section 75 the claim appeared to have been made too late. Our investigator didn't recommend the complaint be upheld. Mr and Mrs H remained unhappy, so I've been asked to make a decision.

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.

Under section 140 of the Act, a court may consider whether the relationship between a creditor and debtor is unfair on the debtor. In doing so it can take into account things done or not done on behalf of the creditor in relation to linked agreements – in this case that includes representations made by the supplier when selling the system to Mr and Mrs H.

Mr and Mrs H have in effect said they were told the system would pay for itself on a monthly basis from the start, because the income and savings from the system would exceed the monthly loan repayments. They say this hasn't happened, so the system was misrepresented, which made Mrs H's relationship with Ikano unfair on her.

Ikano says it is unlikely that the system was represented to Mr and Mrs H in that way. While Mr and Mrs H have not been able to provide it, the supplier would've provided a document that included the estimated first-year benefit of the system. This would've allowed Mr and Mrs H to compare the costs and the benefits of the system and would've made it clear that it would not be self-funding in the way Mr and Mrs H allege they were told it would be.

Ikano has provided a sample of the sales paperwork the supplier was using around the time of the sale. I'm satisfied that similar paperwork is likely to have been used in Mr and Mrs H's sale. But that they probably passed this onto the new owner when they sold the property and the rights to the income from the system.

The MCS certificate shows the system was expected to generate around 2,500 kWh per year. Given the Feed-In Tariff ("FIT") and electricity unit rates at the time the estimated benefits in the first year are likely to have been much less than the first-year loan repayments.

With this in mind, I think it is unlikely that Mr and Mrs H would've been told the system would pay for itself on a monthly basis from the start.

I'm also mindful that the time taken for Mr and Mrs H to take any action in relation to the alleged misrepresentation undermines their recollection of what they was told. I think they would've realised soon after installation that the benefits were not sufficient to cover the loan repayments on a monthly basis.

If that was contrary to their expectations at the time of sale, I would have expected Mr and Mrs H to take action then. They had plenty of time to do so before they moved out, sold the property and the supplier was dissolved. But instead, Mr and Mrs H took no action until more than six years after the sale of the system.

Overall, considering all the evidence, I am not persuaded the alleged misrepresentation took place. The FIT statement information provided indicates that the system generated the expected amount of electricity in the first year. So, it appears to be performing as expected.

I've not seen anything that makes me think that a court would conclude the relationship between Mrs H and Ikano was unfair on her. Mr and Mrs H may feel it is unfair that Mr H is still repaying a loan she took out to purchase a system that they no longer own or benefit from.

But I think that is not something that Ikano had any influence over. Mr and Mrs H sold the property and the system knowing they would no longer benefit from the system but still had to repay the loan.

With all of this in mind, I do not think that Ikano acted unreasonably when rejecting Mr and Mrs H's claim and complaint.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr and Mrs H to accept or reject my decision before 4 January 2024.

Phillip Lai-Fang
Ombudsman