

The complaint

Mr H has complained that Ikano Bank AB (publ) Ikano rejected his claim against it under Section 140 of the Consumer Credit Act 1974.

Mr H is represented by a claims management company ("the CMC").

What happened

Mr H bought a solar panel system ("the system") for his home in 2012. The purchase was funded by a loan from Ikano, and Mr H made a claim under section 140 of the Act to Ikano. He said that P had made a number of representations about the system that had turned out not to be true, and it was these misrepresentations that had induced him to enter into the contract with supplier. Mr H made the following points:

- The system would be fully "Self-Funding" and that no cost would be incurred.
- Mr H was promised a Tax-Free Year 1 benefit of £3,736.32.
- Mr H would not have entered into the agreements if he was not misled or understood that he would have to contribute in excess of £2,981.72 per year for 10 years.
- The credit agreement will be "self-funded" by virtue of the Feed in Tariff (FIT) payments generated by the System.
- The CMC added that it believes Ikano failed to assess Mr H's creditworthiness and failed to disclose any commission it paid to the supplier.
- That Mr H wasn't provided with a cooling off period or cancellation period.

Mr H's complaint was considered by one of our investigators. He thought that the documents from the time of sale (which Mr H signed) made it clear that the benefits of the solar panel system would not cover the cost of the system within the loan term and therefore the system would not be immediately self-funding. He added that based on the performance of the system, it had overperformed in comparison to the estimates given by the supplier and that it was likely the system would be self-funding over a 10-year period. Overall, the investigator did not think a misrepresentation had taken place.

Mr H disagreed. He said (through the CMC) that the benefits he was promised had not materialised and this misrepresentation hadn't been addressed.

As the complaint couldn't be resolved by our investigator, the complaint was passed to me.

In my provisional decision of 8 August 2023, I set out why I was minded to not upholding the complaint. I invited both parties to provide any further submissions they may wish to make before I reached a final decision. Neither Ikano nor Mr H 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:

Both Ikano and the CMC are 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 don't consider it necessary to set all of that out in this decision

Having carefully considered everything provided, for broadly the same reasons as those explained by the investigator, I do not intend to uphold this complaint.

I'm satisfied that Mr H was provided with the sales documents, as his representative sent us a copy. It seems likely that he would've seen these at the time of sale, as he has signed the document. The page setting out the performance estimates of the solar panels sets out the cost of the solar panel system on the same page as the total estimated year 1 benefit. Neither of these figures are hidden away in small print, but are, in my view clearly visible. And Mr H has signed directly beneath this section – So, I think he would've, at the very least, seen this comparison when he signed the document.

SYSTEM PERFORMANCE	
Your system will qualify for payments under the Feed-In-Tariff (FIT) scheme. Taking the predicted performance of your system, it is reasonable to expect:	
1. Generation Income: SAP (e) x FIT rate:	21.1 x £345.08
2. Export income: 50% SAP (e) x Export rate:	0.31 x £25.46
3. Electricity Saving: 50% SAP (e) x Elec cost:	1.8 x £106.73
Actual <input type="checkbox"/> Estimated <input checked="" type="checkbox"/>	
ESTIMATED TOTAL 1ST YEAR BENEFIT: £477.22	
This calculation assumes 30% use of the electricity generated	

I think it's clear from this section that Mr H's total year one benefit was only £477.22.

COSTINGS

Contract Cost: £ 7473

Other (): £

Total Contract Price (incl VAT): £ 7473

Total contract price includes the supply of all required materials, design, installation and commissioning of the system, all guarantees and warranties.

DEPOSIT RECEIPT

For and on behalf of Solarlec PV Solutions Ltd.

I acknowledge deposit receipt of £ 7473

Cash ☐ Cheque ☒ VISA/Mastercard ☐ (We do not accept AMEX)

Signed:  Date: 27.1.12

PAYMENT DETAILS

Remaining balance due: £ 7000.00

Due to installers on completion: £ 1710.00

Finance amount (if applicable): £ 5230.00

Finance type: 24 x 0%

This section sets out the total cost was £7,473, the amount of credit Mr H was taking out was £5,230. It also notes 24 x 0% as the finance type. I think this likely represents the fact that Mr H took out a 24-month loan with 0% interest. So, I'm satisfied that Mr H was aware of how much the system cost and that he'd be taking out a two-year loan to fund the purchase.

Mr H has signed directly beneath this section, so I think that he would have seen these figures at the time he signed the document. Normally the sales document reflects the nature of the discussions the sales representative has with consumers. Overall, I'm persuaded that Mr H would have known that his first-year benefit was around £477 would be significantly less than his annual payments of around £2,615 (half the cost of the two-year loan) without needing to do any calculations.

I understand Mr H has submitted a different estimated returns document which a different estimated first year benefit. But this was not signed or dated, and Mr H has provided no details as to when or how this document was given to him. In any event, if Mr H had been told something different, on being asked to sign the sales contract document with the first-year benefit of £477, I would have expected him to have questioned what he had been told. I've seen no evidence that he did, so I think that suggests that the document he signed most likely did not contradict Mr H's understanding at that time. So, I think the signed contract reflects the figures he was given at the time he signed the document and agreed to the sale. Therefore, it's more reliable evidence of the information he relied on during the sale.

His FIT income is only £370.49 which wouldn't even cover two of his monthly payments (which I understand were just under £218 a month). So, I don't think there's enough evidence that he was told the monthly payments on the credit agreement would be covered by the FIT payments alone.

Overall, I think it would have been clear to him that the solar panels would not be self-funding at the outset or within the term of the loan either by the FIT payments alone, or the total benefits received by the system. I think it was apparent that there would likely be a significant shortfall between the cost of the system and the benefit he would receive during the term of the loan.

I've seen no evidence that Mr H was promised a tax-free year 1 benefit of £3,736.32. I also don't understand Mr H's claim that he would have to contribute in excess of £2,981.72 per year for 10 years. From what I can see, after the two-year loan was repaid, Mr H would not have had to pay anything else towards the cost of the system.

Performance

The CMC has recently alleged that that Mr H hasn't received the benefits he was promised. But the CMC has also told us that based on the customers actual Feed In tariff (FIT) payments, his annual benefit prorated to a 12-month period equates to £754.60. This is significantly more than the FIT estimates on the contract which was £370.49. Even on the undated and unsigned estimated returns, the FIT income is only £446.81.

Mr H hasn't told us what the savings on his bills are and he hasn't submitted any bills (either pre/post installation). So, I don't know what (if any) savings he has achieved and whether or not they are in line with the suppliers estimates. But I haven't seen any evidence that the system hasn't performed as expected. The only evidence of performance that I have seen, are of the FIT payments and this shows the system has significantly overperformed in comparison to the suppliers estimates.

I would add that the signed document Mr H has sent in explicitly says that it is impossible to predict the performance of the system with certainty and that any estimates given should be seen as a guide and not a guarantee. Overall, I haven't seen sufficient evidence that that the system has not performed in line with the estimates given. And in any event, Mr H wasn't given any guarantees of performance.

Self-funding over 10 years

I would add that even without savings, Mr H's FIT income over 10 years is likely to be more than the total cost of the system. So, like our investigator says, I think it's more likely the system will be self-funding over 10 years.

Mr H hasn't alleged that he was told the system would be self-funding over 10 years. But the claim that he has alleged (that the system would be self-funding from the outset) is not supported by the documents that he has signed so I don't intend to uphold his complaint on this basis.

But it may be helpful to clarify that even if we were to uphold his self-funding complaint, our redress does not seek to make any misrepresentation come true. But our usual redress ordered, would be to ensure that the system is self-funding over 10 years – so Mr H would not pay any more for the system than the benefit he would likely receive over a 10-year period. So, it's likely, that even if we did uphold his complaint there would be no redress due to him.

Other issues

Mr H has pointed out that he wasn't given a cooling off period or cancellation period. The cancellation period does appear to be set out in his credit agreement. But in any event, I've seen no evidence that Mr H tried to or wanted to cancel the agreement. So, I don't intend to uphold his complaint because of these issues.

Mr H has also raised concerns over whether Ikano correctly assessed his creditworthiness. But I've seen no evidence the loan wasn't affordable, and it looks like Mr H repaid the loan in 2014 as expected. So again, I don't intend to uphold his complaint because of this issue.

Summary

While I've carefully considered Mr H's testimony, I find the signed documents from the time of sale to be more persuasive in terms of what information he 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.

I've also gone on to consider whether a court may conclude that there existed an unfair relationship under the Act. A sufficient inequality of knowledge and understanding is considered a classic source of unfairness in a relationship between a creditor and a consumer. I've seen no evidence that Ikano paid any commission to the supplier, and considering that I haven't found any misrepresentation, I think a court is unlikely to conclude that there is an unfair relationship under the Act.

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. So having reviewed this complaint again in its entirety, although I've considered Mr H's testimony, I still find that the signed documents from the time of sale to be more persuasive in terms of what information Mr H was likely given at the time of sale. Overall, I think the evidence suggests that it is unlikely there was a misrepresentation that would enable me to uphold this complaint.

I've also considered whether a court may conclude that there existed an unfair relationship under the Act. A sufficient inequality of knowledge and understanding is considered a classic source of unfairness in a relationship between a creditor and a consumer. I've seen no evidence that Ikano paid any commission to the supplier, and considering that I haven't found any misrepresentation, I think a court is unlikely to conclude that there is an unfair relationship under the Act.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 September 2023.

Asma Begum
Ombudsman